

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DANIEL HOUDE,
Plaintiff

v.

ROBERT TURGEON, STEPHEN
GUNNERSON, KEVIN JOHANSON,
MATTHEW D'ANDREA, BRIAN
HALLORAN, THOMAS DUFFY, SEAN
MCCANN and CITY OF WORCESTER
Defendants

C.A. NO. 05-40075FDS

MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

Plaintiff has filed suit against the City of Worcester and seven of its police officers alleging that the Defendants violated his civil rights during the course of an arrest which took place on May 20, 2001. For the reasons detailed below, Defendants Robert Turgeon, Stephen Gunnerson, Kevin Johanson, Matthew D'Andrea, Brian Halloran, Thomas Duffy, Sean McCann, and the City of Worcester ("the Defendants") ask this Court to enter summary judgment, pursuant to Fed. R. Civ. P. Rule 56(b), in their favor, dismissing all counts of Plaintiff's Complaint against the Defendants.

II. STANDARD OF REVIEW OF MOTION FOR SUMMARY JUDGMENT

Rule 56 of the Federal Rules of Civil Procedure permits the Court to grant summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of

law." Fed. R. Civ. P. 56(c). In deciding the motion, the court must view "the facts in the light most favorable to the non-moving party, drawing all reasonable inferences in that party's favor." Barbour v. Dynamics Research Corp., 63 F.3d 32, 36 (1st Cir. 1995). The moving party must demonstrate an absence of evidence supporting the opposing party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). The opposing party must then set forth specific facts showing that there is a genuine issue of material fact, and may not rest on the allegations or denials of the pleadings, Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986), or rely upon "improbable inferences" and "unsupported speculation" to establish any element essential to his or her case. Goldman v. First National Bank of Boston, 985 F.2d 1113, 1116 (1st Cir. 1993) (quoting Medina-Munoz v. R.J. Reynolds Tobacco Co., 896 F.2d 5, 8 (1st Cir. 1990)).

III. ARGUMENT

A. Count I: Alleged Conspiracy to Violate 42 U.S.C. § 1983.

Count I of Plaintiff's Complaint alleges that the individual Defendants engaged in a conspiracy to deprive Plaintiff of civil rights, including the following: unlawful stops and harassment, searches and seizures, false arrest, false imprisonment, assault and battery, cruel and unusual punishment, due process, and abuse of process. (Plaintiff's Complaint, ¶ 65). To recover against the individual Defendants under 42 U.S.C. § 1983, Plaintiff must prove that: (1) the individual Defendants acted under color of state law; (2) that the individual Defendants deprived Plaintiff of rights, privileges, or immunities secured by the Constitution or laws of the

United States; and (3) that the Defendants' conduct is causally connected to the deprivation. Parratt v. Taylor, 451 U.S. 527, 535 (1981). Additionally, because Count I of Plaintiff's Complaint asserts a conspiracy claim pursuant to § 1983, Plaintiff must prove the elements of a conspiracy. "A civil rights conspiracy is a combination of two or more persons acting in concert to commit an unlawful act, or to commit a lawful act by unlawful means, the principal element of which is an agreement between the parties to inflict a wrong against or injury upon another, and an overt act that results in damages." Santiago v. Fenton, 891 F.2d 373, 389 (1st Cir. 1989) (citations omitted).

In the present action, Plaintiff's Complaint fails to state the requisite specific factual basis supporting the existence of a conspiracy. See McGillicuddy v. Clements, 746 F.2d 76, 77-78 (1st Cir. 1984) (conspiracy allegations insufficient in absence of specific allegations; it is inadequate to allege that defendants acted jointly in concert). Plaintiff's Complaint does not state with any specific factual basis the existence of a conspiracy, an agreement by the parties to the alleged conspiracy, or how the Defendants' alleged agreement resulted in harm to Plaintiff or that the alleged conspirators shared the same objective. Id. Plaintiff asserts only conclusory allegations without any factual basis. With regard to Plaintiff's allegations that he was subject to unlawful stops and harassment, and searches and seizures, Plaintiff was unable, when asked in his deposition, to provide even one instance where any one of these individual Defendants engaged in such conduct, let alone acted

pursuant to an agreement. Thus, in the absence of any evidence as to the elements of a conspiracy, summary judgment should enter for the individual Defendants as to Plaintiff's claims of conspiracy to make unlawful stops, harassment, searches and seizures.

With regard to Plaintiff's allegations of false arrest and false imprisonment, because Plaintiff pled guilty to a number of charges arising out of the arrest that is the primary subject of this lawsuit, probable cause is established as a matter of law, as is demonstrated below. Accordingly, summary judgment should enter for the individual Defendants as to Plaintiff's claims of conspiracy to falsely arrest and falsely imprison him. With regard to Plaintiff's allegations of conspiracy to deprive Plaintiff of due process¹ and to engage in abuse of process, said claims cannot lie, as is demonstrated below, because abuse of process is not cognizable as a civil rights violation under § 1983. Santiago, 891 F.2d at 388. Finally, with regard to Plaintiff's claims of conspiracy to commit assault and battery and conspiracy to engage in cruel and unusual punishment, Plaintiff's Complaint is utterly devoid of any specific allegations of the existence of a conspiracy, an agreement by the parties to the alleged conspiracy, or how the Defendants' alleged agreement resulted in harm to Plaintiff or that the alleged conspirators shared the same objective. See McGillicuddy, 746 F.2d at 77-78. For the foregoing reasons, summary

¹ It is unclear from Plaintiff's Complaint what due process was denied him. It appears that Plaintiff is claiming that the alleged abuse of process constituted a due process violation. If the Court finds an independent claim for a due process violation, Defendants state that, as with Plaintiff's other conspiracy claims, Plaintiff has failed to provide any evidence as to the elements of conspiracy, and, therefore, summary judgment should enter in favor of the individual Defendants.

judgment should enter for the individual Defendants as to Count I of Plaintiff's Complaint.

B. Count I (in part): Alleged Conspiracy, Pursuant to 42 U.S.C. § 1983, to Commit False Arrest, False Imprisonment, and Unlawful Searches and Seizures; and Count V: Alleged False Imprisonment.

The Fourth Amendment requires arrests to be based on probable cause. See Alexis v. McDonald's Restaurants of Mass., Inc., 67 F.3d 341, 349 (1st Cir. 1995). If probable cause exists to arrest, then there has not been a constitutional deprivation. See Roche v. John Hancock Mut. Life Ins. Co., 81 F.3d 249, 254 (1st Cir. 1996). Plaintiff cannot, as a matter of law, satisfy his burden of proof with respect to all claims that hinge upon a finding of probable cause, because his guilty pleas establish that there was probable cause for his arrest. See Sholley v. Town of Holliston, 49 F. Supp. 2d 14, 18-19 (D. Mass. 1999) (Saris, J.).

On May 20, 2002, Plaintiff was arrested by the Worcester Police Department and charged with the following crimes: (1) illegal possession of a Class B substance; (2) assault and battery with a dangerous weapon (shod foot); (3-5) assault and battery on a police officer (3 counts); (6) resisting arrest; (7) failure to stop for a police officer; (8) illegally attaching plates; (9) operating an uninsured motor vehicle; and (10) operating an unregistered motor vehicle. (Exhibit B). According to the criminal docket sheet, Plaintiff, with the assistance of defense counsel, pled guilty and/or responsible to all charges against him. (Exhibit C). Moreover, Plaintiff signed a waiver of rights, which states that he voluntarily gave up the right to a trial by a judge or jury, and that he discussed

his constitutional and other rights with his attorney, and that his guilty plea was not the result of force, threats, assurances or promises, and that his guilty plea was free and voluntary. (Exhibit B).

Plaintiff now contends that he was forced to plead guilty "in order to receive a lighter overall sentence." (Plaintiff's Complaint, ¶ 62). In making such a claim, Plaintiff is attempting to collaterally attack his criminal convictions, which is impermissible and would require Plaintiff to demonstrate that his convictions had been invalidated. It is well-settled law that civil tort actions, including § 1983 actions, are not appropriate vehicles for challenging the validity of outstanding criminal judgments, where such actions require the plaintiff to prove the unlawfulness of his conviction or confinement. The Supreme Court has held that,

in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus... . A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983. Thus, when a state prisoner [or individual who has pled guilty to a crime] seeks damages in a § 1983 suit, the ... court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has been invalidated.

Heck v. Humphrey, 512 U.S. 477, 486-87, (1994) (emphasis added). This holding stems from "the hoary principle that civil tort actions," including § 1983 actions, "are not appropriate vehicles for

challenging the validity of outstanding criminal judgments," where such actions "require the plaintiff to prove the unlawfulness of his conviction or confinement." Id. at 486. In the case at bar, Plaintiff has not, and cannot, invalidate his convictions because he pled guilty to the crimes freely and voluntarily and with the advice and assistance of defense counsel. Given the importance of finality in criminal judgments and the availability of various mechanisms to overturn a conviction, seek a new trial, appeal or expunge a criminal conviction, Plaintiff should now be foreclosed from collaterally attacking his convictions. Accordingly, judgment should enter in Defendants' favor as to all claims for false arrest, false imprisonment, unlawful search and seizure, and any related conspiracy claim (i.e. Count I (in part) and Count V).

C. Qualified Immunity for Alleged Violations of 42 U.S.C. § 1983.

In the event that the Court does not dismiss Count I of Plaintiff's Complaint for alleged conspiracy to violate 42 U.S.C. § 1983 for the reasons set forth above, the individual Defendants are entitled to qualified immunity from § 1983 liability. Whether or not an officer is entitled to qualified immunity is determined by applying an objective standard. Harlow v. Fitzgerald, 457 U.S. 800, 817-18 (1982). "Government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Id. at 818. This standard for qualified immunity for government officials is interpreted to include the actions of police officers.

Malley v. Briggs, 475 U.S. 335, 343 (1986). Thus, the inquiry on a motion for summary judgment brought by an official seeking qualified immunity is "whether a reasonable official could have believed his actions were lawful in light of clearly established law and the information the official possessed at the time of his allegedly unlawful conduct." Lowinger v. Broderick, 50 F.3d 61, 65 (1st Cir. 1995).

In the present case, the individual Defendants participated to varying degrees in the lawful arrest of Plaintiff. As is discussed above, the lawfulness of Plaintiff's arrest is established by virtue of the fact that he pled guilty to all charges brought against him, including but not limited to multiple counts of assault and battery on a police officer. It follows that a reasonable officer in each of the Defendants' position would have believed it was lawful to assist in the apprehension, arrest, and criminal prosecution of Plaintiff. Thus, summary judgment should be granted in favor of the individual Defendants as to Count I of Plaintiff's Complaint.

D. Immunity From Liability For State Law Claims of Intentional Infliction of Emotional Distress (Count II), Intentional Interference with Prospective Business Relationships (Count III), Abuse of Process (Count IV), False Imprisonment (Count V)², and Assault and Battery (Count VI).

Defendants McCann and D'Andrea are immune from liability for all state law claims against them, including: intentional infliction of emotional distress (Count II), intentional interference with

² In the event that the Court does not dismiss Count V for false imprisonment against all of the individual Defendants on the grounds that Plaintiff's arrest was lawful and made with probable cause, as is evidenced by Plaintiff's guilty pleas, Officers McCann and D'Andrea are immune from liability for said claim pursuant to Mass. Gen. Laws c. 263, § 3.

prospective business relationships (Count III), abuse of process (Count IV), false imprisonment (Count V), and assault and battery (Count VI), as all of these claims arise out of Plaintiff's arrest in which they had only peripheral involvement. Mass. Gen. Laws c. 263, § 3 provides that:

[n]o action, except for use of excessive force, shall lie against any officer other than the arresting officer, by reason of the fact that, in good faith and in the performance of his duties, he participates in the arrest or imprisonment of any person believed to be guilty of a crime unless it can be shown that such other officer in the performance of his duties took an active part in the arrest or imprisonment as aforesaid, either by ordering or directing that said arrest or imprisonment take place or be made, or by actually initiating the making or carrying out of said arrest and imprisonment. No action, except for use of excessive force, shall lie against any bystander assisting an officer in making an arrest, at the request of the officer.

It is undisputed that Defendants McCann and D'Andrea did not take an active part in Plaintiff's arrest. McCann arrived very late on the scene when Plaintiff had already been taken into custody (McCann's deposition transcript, pp. 57-59, attached hereto as Exhibit D), and D'Andrea's sole function on the scene was to attempt to keep a dog away from the participants in Plaintiff's arrest (D'Andrea's deposition transcript, pp. 30-40, attached hereto as Exhibit E). Consequently, summary judgment should enter in favor of McCann and D'Andrea on Counts II, III, IV, V, and VI of Plaintiff's Complaint.

E. Count VI: Alleged Assault and Battery

Count VI of Plaintiff's Complaint alleges that the individual Defendants assaulted and battered Plaintiff. Battery is the intentional, harmful or offensive touching of a person by another, and assault is the apprehension of fear of such a touching. (Restatement

(Second) of Torts, §§ 13 & 21 (1965)). As stated above, it is undisputed that Defendants McCann and D'Andrea did not take an active part in Plaintiff's arrest. McCann arrived very late on the scene when Plaintiff had already been taken into custody (Exhibit D), and D'Andrea's sole function on the scene was to attempt to keep a dog away from the participants in Plaintiff's arrest (Exhibit E). Consequently, summary judgment should enter in favor of McCann and D'Andrea on Count VI of Plaintiff's Complaint.

F. Count I (in part): Alleged Abuse of Process and Violation of Due Process Brought Pursuant to 42 U.S.C. § 1983.

Plaintiff alleges that the individual Defendants initiated criminal process against him as a pretext to cover up for alleged misconduct. (Plaintiff's Complaint, ¶ 52). "An action for abuse of process lies when an officer uses a lawful criminal process to accomplish an unlawful purpose." Santiago v. Fenton, 891 F.2d 373, 388 (1st Cir. 1989) (citing Powers v. Leno, 24 Mass. App. Ct. 381 (1987)). However, "proof of abuse of process alone cannot support a finding of liability under § 1983." Santiago, 891 F.2d at 388. The Court in Santiago ruled that:

[t]he basis of the action for abuse of process is the motivation of the officer in making the arrest. The Supreme Court implicitly has rejected this as a theory of liability by its analysis of qualified immunity. If there was an objective basis for the arrest or prosecution, an officer would be entitled to qualified immunity regardless of his subjective motivation. Thus, the Supreme Court has in effect held that abuse of process - as a claim separate from a claim that there was no probable cause to make the arrest or institute the prosecution - is not cognizable as a civil rights violation under § 1983.

Id. Thus, since there was an objective basis for Plaintiff's arrest, as is evidenced by Plaintiff's guilty pleas, the individual Defendants are entitled to qualified immunity regardless of any ulterior motive alleged by Plaintiff.

"In order to prevail on a claim of a deprivation of procedural due process, 'the claimant must either avail himself of the remedies guaranteed by state law or prove that the available remedies are inadequate.'" Lamoreux v. Haight, 648 F. Supp. 1169, 1175 (1986) (quoting Hudson v. Palmer, 468 U.S. 517, 533 (1984)). Massachusetts law expressly recognizes claims against public officials individually for alleged intentional torts, including abuse of process. See Mass. Gen. Laws c. 258. Plaintiff has failed to show that the available state law remedies were inadequate, and, accordingly, summary judgment should enter in favor of the Defendants with respect to the alleged abuse of process and due process violations of Count I.

G. Count IV: Alleged Abuse of Process

In order to sustain an action for abuse of process, Plaintiff must prove that "(1) [lawful] process was used [by the individual Defendants]; (2) for an ulterior purpose; (3) resulting in damage [to Plaintiff]." American Velodur Metal, Inc. v. Schinabeck, 20 Mass. App. Ct. 460 (1985). "[The] usual case of abuse of process is one of some form of extortion, using the process to put pressure upon the other to compel him ... to take some ... action." Powers v. Leno, 24 Mass. App. Ct. 381, 383-84 (1987) (citation omitted). In the instant action, there are no facts upon which a jury could infer that abuse of process took place especially in light of the fact that the process

resulted in Plaintiff pleading guilty to the charges arising out of his arrest. Moreover, the only officer who initiated criminal process against Plaintiff was Officer Turgeon; Turgeon was the one who made out a request for criminal complaint against Plaintiff, instituting criminal process. (Exhibit C). Accordingly, the remaining individual Defendants did not use process against Plaintiff, and it follows that they cannot be subject to liability for abusing process. Because Plaintiff pled guilty to the charges brought against him, Plaintiff cannot establish an ulterior purpose or resulting damage, and summary judgment must enter in favor of the individual Defendants as to Count IV of Plaintiff's Complaint.

H. Count VIII: Alleged Violation of 42 U.S.C. § 1983 Against the City of Worcester.

A municipality can be liable under § 1983 for failing to train, supervise, or discipline its police officers only if that failure causes a constitutional violation or injury and "amounts to deliberate indifference to the rights of persons with whom the [officers] come into contact. City of Canton v. Harris, 489 U.S. 378, 388 (1989); Bordanaro v. McLeod, 871 F.2d 1151, 1159 (1st Cir. 1989). Stated another way, a municipality may be sued under § 1983 only when the execution of a municipal policy or custom is the cause of the relevant injury. Kelley v. LaForce, 288 F.3d 1, 9 (1st Cir. 2002). And, "[o]nly where a municipality's failure to train[, supervise or discipline] its employees in a relevant respect evidences a 'deliberate indifference' to the rights of its inhabitants can such a shortcoming be properly thought of as a city 'policy or custom' that

is actionable under § 1983." City of Canton, 489 U.S. at 389. The Court in Gonsalves described municipal liability as follows:

[t]he City cannot be held liable on a *respondeat superior* basis for the constitutional torts of its employees. Rather, the City is liable under 42 U.S.C. § 1983 only if it is proven that the unconstitutional conduct of its employees implements or executes a municipal policy or custom. This means that the actions of subordinate officials alone cannot create municipal liability. Rather, the City is potentially liable only for the conduct of its final policymaker or policymakers concerning the conduct in question.

[Plaintiff must show that the final policymaker in the City failed to perform his duties properly, and] it must also be shown that the need for more or different investigations of allegations of misconduct by [City of Worcester Police Department] employees, or more or different decisions regarding whether some discipline was necessary, was 'so obvious, and the inadequacy so likely to result in a violation of constitutional rights, that the [final policymaker] can reasonably be said to have been deliberately indifferent to that need. If this is proven, the plaintiff must next prove that such deliberate indifference was the cause of, and the moving force behind, the deprivation of constitutional rights... .

Gonsalves v. City of New Bedford, 939 F. Supp. 915, 916 (D. Mass. 1996).

In the case at bar, there is no evidence that the City exhibited deliberate indifference in training, supervising, or disciplining the individual officers with respect to use of force. On the contrary, it is undisputed that all of the individual officers received training on use of force in their respective police academy classes. Additionally, it is undisputed that all of the officers receive updates in their training, including use of force, twice annually through so-called in-service training. Furthermore, it is undisputed that each officer received, reviewed, and was instructed upon the Worcester Police Department Use of Force Policy. (See Use of Force

Policy, attached hereto as Exhibit F). As to the disciplining of police officers, the City's policy with respect to citizen complaints of alleged police misconduct requires a complete and thorough investigation, and discipline when warranted. (See Internal Affairs Investigations policy, attached as Exhibit G). There is no evidence that the required investigations and discipline did not occur. Assuming arguendo that there was evidence that the City's training, supervision, or discipline was wanting, there is no evidence that the City was deliberately indifferent to the rights of its citizens. Absent such evidence, Plaintiff cannot establish liability on the part of the City of Worcester under § 1983, and summary judgment should enter in favor of the City of Worcester on Count VIII of Plaintiff's Complaint.

I. Count II: Alleged Intentional Infliction of Emotional Distress.

To maintain a cause of action for intentional infliction of emotional distress, Plaintiff must establish that: (1) the individual Defendants intended to inflict emotional distress or that they knew or should have known that emotional distress was the likely result of their conduct; (2) the conduct of the Defendants was extreme and outrageous and beyond all possible bounds of decency and was utterly intolerable in a civilized community; (3) the actions of the Defendants was the cause of Plaintiff's distress; and (4) the emotional distress sustained by Plaintiff was severe and of such a nature that no reasonable person could be expected to endure it. Agis v. Howard Johnson Co., 371 Mass. 140, 144-45 (1976) (citing Restatement (Second) of Torts, § 46 (1965)). However, "[p]olice

officers do not act in an extreme, outrageous, and intolerable manner when they make an arrest based upon probable cause, and the distress that invariably accompanies an arrest, while it can be quite severe, is not beyond the limits of what a reasonable person can be expected to endure." Sholley v. Town of Holliston, 49 F. Supp. 2d 14, 22 (D. Mass. 1999) (emphasis added). Accordingly, since Plaintiff's arrest was supported by probable cause, as is evidenced by Plaintiff's guilty pleas, summary judgment should enter in favor of the Defendants as to Plaintiff's claim for emotional distress.

J. Count III: Alleged Intentional Interference with Prospective Business Relations.

Plaintiff claims that the individual Defendants interfered with "prospective business relationships with persons that frequented his mobile food [hot dog cart] business." (Plaintiff's Complaint, ¶ 76). Plaintiff claims further that the alleged interference was accomplished through his "unlawful incarceration," which Plaintiff claims resulted in the total loss of his business. (Plaintiff's Complaint, ¶ 77). Plaintiff claims that the individual Defendants were improperly motivated to drive him out of business "in order to allow other businesses an improper competitive advantage." (Plaintiff's Complaint, ¶ 78). Plaintiff claims further that the Worcester Police Department harassed him in order to promote a competing hot dog cart business owned and/or operated by a non-party Worcester police officer's father. (Plaintiff's Complaint, ¶¶ 32-33, 78).

To maintain a cause of action for intentional interference with prospective business relationships, Plaintiff must establish that: (1)

Plaintiff had a business relationship or contemplated contract for economic benefit with a third party; (2) Defendants knew of the business relationship or prospective business relationship; (3) Defendants' interference was intentional and involved improper motives or means; and (4) Plaintiff was harmed by Defendants' actions. See Adcom. Prods., Inc. v. Konica Bus. Machs. USA, Inc., 41 Mass. App. Ct. 101, 104 (1996). Plaintiff cannot satisfy his burden of proof as a matter of law. First, Plaintiff's "business relationship" with prospective hot dog cart customers is far too tenuous and speculative as to be actionable. Id. at 107. Second, Plaintiff cannot sustain his claim that the alleged intentional interference was effectuated through an unlawful arrest and incarceration because his arrest was supported by probable cause and it was, therefore, lawful, as is evidenced by Plaintiff's guilty pleas. Finally, and most importantly, Plaintiff cannot prove that the Defendants' actions in arresting him were the proximate cause of his alleged total loss of his hot dog cart business because it was Plaintiff's own criminal conduct which resulted in his arrest, convictions, and subsequent incarceration. Since Plaintiff caused his own economic hardship, summary judgment should enter in favor of the individual Defendants on Count III of Plaintiff's Complaint.

K. Count VII: Alleged Libel

Count VII sets forth a claim of libel against Defendant Turgeon for allegedly publishing defamatory and libelous statements concerning Plaintiff in his Worcester Police Department Incident Report dated May 21, 2001. (Plaintiff's Complaint, ¶ 95) (See incident report,

attached hereto as Exhibit A). As to the nature of the purportedly defamatory and libelous statements, Plaintiff claims that "Officer Turgeon's statements were of a nature that would offend a considerable and respectable class in the community in that they wrongfully stated that [Plaintiff] had committed crimes which he did not commit." (Plaintiff's Complaint, ¶ 97).

"Defamation is the intentional or reckless publication, without privilege to do so, of a false statement of fact which causes damage to the plaintiff's reputation." LeBeau v. Town of Spencer, 167 F. Supp. 2d 449, (D. Mass. 2001)(citing Correllas v. Viveiros, 410 Mass. 314, 319 (1991)). "Libel is a defamatory statement that is written..." Id. (citing McAvoy v. Shufrin, 401 Mass. 593, 595 (1988)). "Under Massachusetts law, police officers are considered public figures for purposes of defamation. Therefore, the plaintiff[] must show by clear and convincing evidence that the defendants published the alleged defamatory statements with actual malice, that is, with knowledge that the statement was false or with reckless disregard for its falsity." Id. (citations omitted). In the present action, there is no evidence that Officer Turgeon's statements were false. To the contrary, Plaintiff's guilty pleas support the truth of the statements contained within Officer Turgeon's police report.

Furthermore, while it is true that "[c]harges of crime are slanderous and actionable per se ... ," Sietins v. Joseph, 238 F. Supp. 2d 366, 378 (D. Mass. 2003)(citations omitted), it is also true that "statements made in the course of judicial proceedings which pertain to those proceedings are absolutely privileged and cannot form the

basis for a defamation claim, even if uttered with malice or in bad faith." Id. "Similarly, an application for a criminal complaint is generally considered as involving a form of judicial proceeding and the statements made therein are absolutely privileged." Id. (citation omitted). In the Sietins case, the only statements made by the police defendants were in the context of seeking a criminal complaint, and, as such, those statements were deemed privileged. Id.

In the present action, Officer Turgeon filed a police report and requested a criminal complaint against Plaintiff. (Exhibits A and C). In this context, as in Sietins, Turgeon's statements are privileged. As a result of Turgeon's institution of criminal process, a criminal complaint issued against Plaintiff, and he ultimately pled guilty to all charges. Plaintiff's guilty pleas support the truth of Turgeon's statements.

For the foregoing reasons, summary judgment should enter in favor of Defendant Turgeon on Count VII of Plaintiff's Complaint.

IV. CONCLUSION

For the reasons set forth herein, summary judgment should enter in favor of the Defendants on all counts of Plaintiff's Complaint.

Respectfully submitted,

Robert Turgeon, Stephen Gunnerson,
Kevin Johanson, Matthew D'Andrea,
Brian Halloran, Thomas Duffy,
Sean McCann and City of Worcester,

By their attorneys,

David M. Moore
City Solicitor

/s/ Janet J. McGuiggan
Assistant City Solicitor
City of Worcester
City Hall, Room 301
455 Main Street
Worcester, MA 01608
(508) 799-1161
BBO #630013

CERTIFICATE OF SERVICE

I, Janet J. McGuiggan, hereby certify that, on this 12th day of February, 2007, the within document was filed through the ECF electronic filing system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Janet J. McGuiggan
Janet J. McGuiggan

EXHIBIT A

Worcester Police Department
Incident Report

May 20, 2002

Monday 03:26

Single Narrative

INCIDENT LOCAL # PRIORITY ACC REP	ACTIVITY ADDRESS (JURISDICTION) DISPOSITION	OFFICER(S)	RECEIVED DISPATCHED ARRIVED CLEARED	DISPATCHER SUPERVISOR NATURE INCIDENT TYPE
I0254157	PATROL INITIATED	TURGEON	05/20/2002, 00:43	COLES
4	165 GRAFTON ST	GUNNERSONS	05/20/2002, 00:44	
No	Cross: 1 CORAL ST @156	JOHANSONKR	05/20/2002, 00:45	SUSPICIOUS MV
No	1 PENN AV @208	DANDREAMD	05/20/2002, 01:13	DISORDERLY PERS
	WORCESTER, MA, 01604 (04)	HALLORAN		CT: COLES
	ARREST			

Caller's Info: 06L OTA

Reported as: SUSPICIOUS MV Found as: DISORDERLY PERS
Domestic Abuse: No

Dispatcher Remarks:

06L CALLED OUT W/CAMPER PLATE MA REG#89092...JDC./... 1 PERSON IN CUSTODY...JDC./... @0046 - RT09L CALLED OUT FOR THE WAGON - CELLROOM NOTIFIED AND OTW....JDC./... PER RT08L - 1 W/F W/BROWN HAIR AND EITHER A BLUE OR BLACK COAT RAN FROM THE SCENE...SEARCHING THE AREA FOR THE FEMALE. JDC./.... PER RT08L - THE FEMALE HEADED UP CORAL ST...JDC./.... SHE IS MEDIUM TO HEAVY BLD...POSS. TRYING TO HEAD BACK TO ORIENT ST...JDC./.... WAGON 84 HEADED TO CHARLIES TO PICK UP FEMALE ...COMP ARREST....BS CHARLIES LOC AT 240 GRAFTON...BS S/M 82614...BS E/M 82615...BS

ARRESTED RUDY, RENEE E *
(Female) 9 FREELAND ST Apt: 2R
M0037351 WORCESTER MA 01603
Phone: 508-363-3942 Race: WHI
Commt: ARRESTED: SUSPICIOUS MV

License: [REDACTED] (MA)
SSN: [REDACTED]

DOB: [REDACTED] Age: 33

ARRESTED HOUDE, DANIEL J *
(Male) 18 ORIENT ST Apt: 1
M9541178 WORCESTER MA 01604
Phone: 754-3477 Race: WHI
Commt: ARREST- M.V. / 94C

License: [REDACTED] 7 (MA)
SSN: 0 [REDACTED]

DOB: 03/14/1964 Age: 38

VICTIM TURGEON, ROBERT
(Male) 911 LINCOLN ST
M0080319 WORCESTER MA 01605
Phone: 799-8669
Commt: VICTIM A&B

License: None

DOB: None Recorded

VICTIM GUNNERSON, STEPHEN
(Male) 911 LINCOLN SQ
M9907826 WORCESTER MA 01608
Phone: 799-8669 Race: WHI
Commt: VIC. A&B D.W.

License: None

DOB: None Recorded

Single Narrative

INCIDENT LOCAL # PRIORITY ACC REP	ACTIVITY ADDRESS (JURISDICTION) DISPOSITION	OFFICER(S)	RECEIVED DISPATCHED ARRIVED CLEARED	DISPATCHER SUPERVISOR NATURE INCIDENT TYPE
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Incident I0254157 (continued)

Persons:

VICTIM HALLORAN, BRIAN License: [REDACTED] (MA)
 (Male) 9 LINCOLN SQ
 M9713688 WORCESTER MA 01608
 Phone: 799-8669 Race: WHI DOB: [REDACTED] Age: 31
 Commt: VIC. A&B

VICTIM JOHANSON, KEVIN License: None
 (Male) 911 LINCOLN SQ
 M9928587 WORCESTER MA 01608
 Phone: 799-8620 DOB: None Recorded
 Commt: VIC. A&B

Narrative(s):

Narr. 1: PO ROBERT TURGEON Division: None Status: Open [I0254157]
 Title: ARREST NARRATIVE Entered: PO ROBERT TURGEON Date: 05/20/02
 Reviewed: No officer Edit: 05/20/02

ON 05/20/02 AT APPROXAMETLY 0043 HRS. I WAS ON PATROL IN A MARKED CRUISER ON GRAFTON ST. WHEN I OBSERVED A FORD CAMPER TRAVELING WEST ON GRAFTON ST. WHEN I NOTICED THAT THE LICENSE PLATE ATTACHED TO THE REAR OF THE CAMPER, MA. 89092, WAS HANGING OFF. THE M.V. PULLED INTO A GAS STATION AT 263 GRAFTON ST. I PULLED INTO THE SAME PARKING LOT AND NOTICED THAT THE FRONT PLATE, MA. 82903, WAS DIFFERENT FROM THE FRONT PLATE. AS THE VEHICLE LEFT THE LOT AND CONTINUED DOWN GRAFTON ST. WHEN I ACTIVATED MY EMERGENCY LIGHTS AND ATTEMPTED TO STOP THE VEHICLE. THE VEHICLE REFUSED TO STOP AND CONTINUED DOWN GRAFTON ST. AND DROVE INTO A BACK PARKING LOT AT 165 GRAFTON ST. I ADVISED DISPATCH AND ASKED FOR ADDITIONAL CARS. P.O.'S STEVE GUNNERSON, KEVIN JOHANSON ARRIVED TO ASSIST. I APPROACHED THE DRIVERS SIDE AND ASKED THE DIVER TO LOWER HIS WINDOW IT WAS AT THIS POINT THAT THE DRIVER, LATER IDENTIFIED AS DANIEL HOUE (03/14/64), REACHED OVER AND LOCKED HIS DOOR. FEARING FOR THE MY SAFETY AND THE SAFETY OF THE OFFICERS PRESENT I ORDERED HOUE TO UNLOCK THE DOOR AND EXIT THE VEHICLE, HE REFUSED, HOUE KEPT HIS HANDS IN HIS WAIST AREA ATTEMPTING TO HIDE SOMETHING. I REPEATED THIS ORDER SEVERAL MORE TIMES WITHOUT COMPLIANCE, P.O. JOHANSON STATED THAT HE WAS GOING TO ENTER THE VEHICLE THROUGH AN UNLOCKED SIDE DOOR.

AS JOHANSON ENTERED THE M.V. HE UNLOCKED THE DOOR AND WE ATTEMPTED TO GET HOUE OUT OF THE VEHICLE. AT FIRST HE REFUSED TO LET GO OF THE STEERING WHEEL WITH HIS RIGHT HAND WHILE KEEPING HIS LEFT HAND CLOSED. HE THEN BEGAN TO VIOLENTLY STRUGGLE, FLAILING AND SWINGING HIS ARMS. AT SOME POINT IN THE BEGINNING OF THE STRUGGLE P.O. GUNNERSON WAS AT THE PASSENGER DOOR. IN THE SEAT WAS A FEMALE, LATER IDENTIFIED AS RENEE RUDY (10/28/68), WHILE JOHANSON AND I WERE STRUGGLING WITH HOUE RUDY ATTEMPTED TO EXIT THE VEHICLE WITH GUNNERSON STANDING THERE. GUNNERSON ADVISED HER TO STAY IN THE VEHICLE AT WHICH POINT

Single Narrative

INCIDENT LOCAL # PRIORITY ACC REP	ACTIVITY ADDRESS (JURISDICTION) DISPOSITION	OFFICER(S)	RECEIVED DISPATCHED ARRIVED CLEARED	DISPATCHER SUPERVISOR NATURE INCIDENT TYPE
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Narrative 1 (continued) By: PO ROBERT TURGEON

Incident I0254157

RUDY FLUNG OPEN THE DOOR VIOLENTLY AND STRUCK P.O. GUNNERSON RIGHT ARM AND SHOULDER. GUNNERSON, SEEING US STRUGGLING WITH HOUDE, ENTERED THE M.V. TO ASSIST US. RUDY FLED THE SCENE ON FOOT AND WAS FOUND AT UNCLE CHARLIE'S TAVERN ON GRAFTON ST. WHERE SHE BECAME LOUD AND BOISTEROUS CAUSING A DISTURBANCE INSIDE THE BUSINESS.

P.O.'S JOHANSON, GUNNERSON AND I CONTINUED TO ATTEMPT TO PLACE HOUDE INTO CUSTODY. HE WAS TOLD SEVERAL TIMES BY THE THREE OF US TO STOP RESISTING AND PUT HIS HANDS BEHIND HIS BACK. DURING THIS TIME HOUDE PUNCHED ME IN THE RIBS AND PUNCHED P.O. JOHANSON IN THE NECK AREA. HE ALSO KICKED P.O. GUNNERSON IN THE CHEST. OTHER OFFICERS HEARD THE STRUGGLE OVER OUR PORTABLE RADIOS AND ARRIVED AT THE SCENE TO ASSIST. P.O.'S BRIAN HALLORAN, MATTHEW D'ANDREA, THOMAS DUFFY AND SEAN MCCANN ARRIVED AND BEGAN TO ASSIST IN PUTTING HOUDE INTO CUSTODY. WHEN THESE OFFICERS ARRIVED WE WERE STILL IN THE CAMPER AT THE SIDE DOOR, I OBSERVED HOUDE DROP SOMETHING OUT OF HIS STILL CLOSED LEFT HAND. I WAS ABLE TO RECOVER THIS ITEM AND UPON FURTHER INSPECTION IT WAS DISCOVERED TO BE A SMALL PLASTIC BAGGIE "CORNER" WHICH CONTAINED A HARDENED WHITE SUBSTANCE, WHICH THROUGH MY TRAINING AND EXPERIENCE I BELIEVED TO BE CRACK COCAINE. WE CONTINUED TO FIGHT WITH HOUDE AND AT THE POINT WHEN HOUDE WAS BEING TAKEN FROM THE CAMPER HE LOST HIS FOOTING AND LANDED ON THE PAVEMENT. HOUDE CONTINUED TO STRUGGLE FOR SEVERAL MORE MINUTES AT WHICH POINT P.O. DUFFY ADVISED HOUDE THAT IF HE DID NOT COMPLY THAT HE WOULD BE SPRAYED WITH O.C. AFTER ANOTHER WARNING P.O. DUFFY SPRAYED HOUDE WITH HIS DEPARTMENT ISSUE O.C. SPRAY FOR A ONE SECOND BURST INTO TO THE FACE AREA. HOUDE BEGAN TO COMPLY AND WAS PLACED IN HANDCUFFS. HE WAS REMOVED FROM THE AREA OF O.C. SPRAY ADVISED OF ITS EFFECTS. SOMETIME DURING THE ALTERCATION HOUDE SUFFERED A LACERATION ABOVE HIS EYE.

THE PATROL WAGON ARRIVED AND IMMEDIATELY TRANSPORTED HOUDE TO UMASS MEMORIAL FOR TREATMENT FOR HIS LACERATION AND THE EFFECTS OF THE O.C. SPRAY. THE FEMALE, RENEE RUDY WAS ALSO PLACED UNDER ARREST AND TRANSPORTED TO THE CELLROOM FOR BOOKING.

SEVERAL OFFICERS WERE EXPOSED TO HOUDE BLOOD AND WE WERE MET BY MEDIC 1 AND THEY ASSISTED US IN CLEANING OFF THE BLOOD. THEY ALSO EXAMINED P.O. HALLORAN AND MYSELF FOR INJURIES WE SUFFERED IN THE ALTERCATION. HALLORAN SUFFERED A CONTUSION TO HIS FOREARM AND ALSO AN ABRASION TO HIS ELBOW. HE DID NOT SEEK FURTHER TREATMENT. I SUFFERED AN INJURY TO MY RIGHT HAND WHICH THE PARAMEDIC STATED COULD BE A "BOXER'S FRACTURE" AND HE ADVISED ME OF MY OPTIONS. AT THIS TIME I DID NOT SEEK FURTHER TREATMENT.

THE LICENSE PLATES WERE RUN THROUGH CJIS AND THE REAR PLATE, 89092, CAME BACK AS NO MATCHING RECORD FOUND. THE FRONT PLATE, 82903, CAME BACK EXPIRED TO A MARY STELLATO OF MATTAPOISET MA. AT THIS TIME SHE COULD NOT BE CONTACTED. BOTH PLATES WERE CONFISCATED AND WILL BE TURNED INTO THE REGISTRY OF MOTOR VEHICLES. THE COCAINE WAS TURNED IN AT THE SERVICE DIVISION TO BE PICKED UP BY THE VICE SQUAD AND SENT OUT FOR ANALYSIS.

RENEE RUDY'S CHARGES ARE:

1. DISORDERLY BEHAVIOR
2. DISTURBING THE PEACE
3. A&B BY DANGEROUS WEAPON (TO WIT: CAR DOOR)

Worcester Police Department

May 20, 2002

Incident Report

Monday 03:26

Single Narrative

INCIDENT LOCAL # PRIORITY ACC REP	ACTIVITY ADDRESS (JURISDICTION) DISPOSITION	OFFICER(S)	RECEIVED DISPATCHED ARRIVED CLEARED	DISPATCHER SUPERVISOR NATURE INCIDENT TYPE
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Narrative 1 (continued) By: PO ROBERT TURGEON

Incident I0254157

4. RESISTING ARREST
5. WARRANT- UNLICENSED OPERATION/SPEEDING (DEF. DOCKET 0062CR006216)

DANIEL HOUE'S CHARGES ARE:

1. ILLEGAL POSS. OF A CLASS B SUB.
2. A&B BY DANGEROUS WEAPON (TO WIT: SHOD FOOT)
3. A&B ON A POLICE OFFICER
4. A&B ON A POLICE OFFICER
5. A&B ON A POLICE OFFICER
6. RESISTING ARREST
7. FAILURE TO STOP FOR A POLICE OFFICER
8. ILLEGALLY ATTACHING PLATES
9. OPER. AN UNREG. M.V.
10. OPER. AN UNINSURED M.V. (CITATIONS K0773490 AND K0773491 WERE

ISSUED)

THE CAMPER WAS LEFT AT THE SCENE BECAUSE IT WAS ON PRIVATE PROPERTY.
DISPATCH WAS NOTIFIED IN THE EVENT THE OWNER OF THE PROPERTY CALLED.

REPORTING OFFICER

DATE

REVIEWING OFFICIAL

DATE

EXHIBIT B

CRIMINAL DOCKET		DOCKET NO. 0262CR005098	
COURT DIVISION Worcester		<input type="checkbox"/> INTERPRETER REQUIRED	
NAME, ADDRESS AND ZIP CODE OF DEFENDANT HOUDE, DANIEL J 18 ORIENT ST #1 WORCESTER, MA 01604		ATTORNEY NAME [Handwritten: 5-20-02 Brooks]	
DEFT. DOB AND SEX [Redacted] M		DATE and JUDGE [Handwritten: 5-20-02 Brooks]	
DATE OF OFFENSE(S) 05/20/2002		DOCKET ENTRY <input type="checkbox"/> Attorney appointed (SJC R. 3.10) <input type="checkbox"/> Atty denied and Deft Advised per 211D §2A <input type="checkbox"/> Waiver of counsel found after colloquy	
COMPLAINANT SWIFT, LT BARBARA		Terms of release set: <input checked="" type="checkbox"/> PR <input type="checkbox"/> Bail: <input type="checkbox"/> Held (276 §58A) <input type="checkbox"/> See back for special conditions	
DATE OF COMPLAINT 05/20/2002		Arraigned and advised: <input checked="" type="checkbox"/> Potential of bail revocation (276 §58) <input type="checkbox"/> Right to bail review (276 §58) <input type="checkbox"/> Right to drug exam (111E §10)	
COUNT/OFFENSE 1. 94C/34/C DRUG, POSSESS CLASS B c94C §34		Advised of right to jury trial: <input type="checkbox"/> Does not waive <input checked="" type="checkbox"/> Waiver of jury trial found after colloquy	
DISPOSITION DATE and JUDGE [Handwritten: 11/22/02 Teshon]		Advised of trial rights as pro se (Supp. R. 4) Advised of right of appeal to Appeals Ct (R. 28)	
DISPOSITION METHOD <input checked="" type="checkbox"/> Guilty Plea or Admission to Sufficient Facts accepted after colloquy and 278 §29D warning <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> None of the Above		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without guilty finding until: <input type="checkbox"/> Probation <input type="checkbox"/> Pretrial Probation (276 §87) - until: <input type="checkbox"/> To be dismissed upon payment of court costs/restitution <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Comm. <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Deft <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Deft's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70C)	
FINDING <input type="checkbox"/> Not Guilty <input checked="" type="checkbox"/> Guilty <input type="checkbox"/> Not Responsible <input type="checkbox"/> Responsible <input type="checkbox"/> No Probable Cause <input type="checkbox"/> Probable Cause		FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated: defendant discharged	
COUNT/OFFENSE 2. 265/15A/A A&B WITH DANGEROUS WEAPON c265 §15A(b)		JUDGE [Handwritten: 90 days etc comm w/ CC 9060 108 days credit 10-29-02 plea w/drawal]	
DISPOSITION DATE and JUDGE [Handwritten: 11/22/02 Teshon]		DATE [Handwritten: 11-29-02]	
DISPOSITION METHOD <input checked="" type="checkbox"/> Guilty Plea or Admission to Sufficient Facts accepted after colloquy and 278 §29D warning <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> None of the Above		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without guilty finding until: <input type="checkbox"/> Probation <input type="checkbox"/> Pretrial Probation (276 §87) - until: <input type="checkbox"/> To be dismissed upon payment of court costs/restitution <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Comm. <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Deft <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Deft's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70C)	
FINDING <input type="checkbox"/> Not Guilty <input checked="" type="checkbox"/> Guilty <input type="checkbox"/> Not Responsible <input type="checkbox"/> Responsible <input type="checkbox"/> No Probable Cause <input type="checkbox"/> Probable Cause		FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated: defendant discharged	
COUNT/OFFENSE 3. 265/13D/A A&B ON POLICE OFFICER c265 §13D		JUDGE [Handwritten: 90 days etc comm w/ CC 9060 75 days credit]	
DISPOSITION DATE and JUDGE [Handwritten: 11/22/02 Teshon]		DATE [Handwritten: 11-29-02]	
DISPOSITION METHOD <input checked="" type="checkbox"/> Guilty Plea or Admission to Sufficient Facts accepted after colloquy and 278 §29D warning <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> None of the Above		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without guilty finding until: <input type="checkbox"/> Probation <input type="checkbox"/> Pretrial Probation (276 §87) - until: <input type="checkbox"/> To be dismissed upon payment of court costs/restitution <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Comm. <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Deft <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Deft's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70C)	
FINDING <input type="checkbox"/> Not Guilty <input checked="" type="checkbox"/> Guilty <input type="checkbox"/> Not Responsible <input type="checkbox"/> Responsible <input type="checkbox"/> No Probable Cause <input type="checkbox"/> Probable Cause		FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated: defendant discharged	
COUNT/OFFENSE 4. 265/13D/A A&B ON POLICE OFFICER c265 §13D		JUDGE [Handwritten: 90 days etc comm w/ CC 9060 75 days credit]	
DISPOSITION DATE and JUDGE [Handwritten: 11/22/02 Teshon]		DATE [Handwritten: 11-29-02]	
DISPOSITION METHOD <input checked="" type="checkbox"/> Guilty Plea or Admission to Sufficient Facts accepted after colloquy and 278 §29D warning <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> None of the Above		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without guilty finding until: <input type="checkbox"/> Probation <input type="checkbox"/> Pretrial Probation (276 §87) - until: <input type="checkbox"/> To be dismissed upon payment of court costs/restitution <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Comm. <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Deft <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Deft's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70C)	
FINDING <input type="checkbox"/> Not Guilty <input checked="" type="checkbox"/> Guilty <input type="checkbox"/> Not Responsible <input type="checkbox"/> Responsible <input type="checkbox"/> No Probable Cause <input type="checkbox"/> Probable Cause		FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated: defendant discharged	
COURT ADDRESS Worcester District Court 50 Harvard Street Worcester, MA 01608		<input checked="" type="checkbox"/> ADDITIONAL COUNTS ATTACHED	
A TRUE COPY CLERK-MAGISTRATE/ASST. CLERK ON (DATE)		ATTEST: [Handwritten: X]	

ADDITIONAL COUNTS

Page 2 Of 2

COUNT-OFFENSE		V/W FEE	FINE	SURFINE	COSTS	TOTAL DUE
5. 265/13D/A A&B ON POLICE OFFICER c265 §13D						
DATE 11-22-02	PLEA <input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty <input type="checkbox"/> Nolo <input type="checkbox"/> New Plea: <input type="checkbox"/> Admits suff. facts	IMPRISONMENT AND OTHER DISPOSITION 90 days etc come w/o 24000 75 days credit				
	FINDING G JUDGE Teshaw	FINAL DISPOSITION <input type="checkbox"/> Discharged from probation <input type="checkbox"/> Dismissed at request of probation				
	<input type="checkbox"/> Cont. w/o finding until: <input type="checkbox"/> Appeal of find. & disp. <input type="checkbox"/> Appeal of disp.	DATE				
6. 268/32B RESIST ARREST c268 §32B						
DATE 11-22-02	PLEA <input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty <input type="checkbox"/> Nolo <input type="checkbox"/> New Plea: <input type="checkbox"/> Admits suff. facts	IMPRISONMENT AND OTHER DISPOSITION 90 days etc come w/o 24000 75 days credit				
	FINDING G JUDGE Teshaw	FINAL DISPOSITION <input type="checkbox"/> Discharged from probation <input type="checkbox"/> Dismissed at request of probation				
	<input type="checkbox"/> Cont. w/o finding until: <input type="checkbox"/> Appeal of find. & disp. <input type="checkbox"/> Appeal of disp.	DATE				
7. 90/25/D STOP FOR POLICE, FAIL c90 §25						
DATE 11-22-02	PLEA <input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty <input type="checkbox"/> Nolo <input type="checkbox"/> New Plea: <input type="checkbox"/> Admits suff. facts	IMPRISONMENT AND OTHER DISPOSITION Fled				
	FINDING G JUDGE Teshaw	FINAL DISPOSITION <input type="checkbox"/> Discharged from probation <input type="checkbox"/> Dismissed at request of probation				
	<input type="checkbox"/> Cont. w/o finding until: <input type="checkbox"/> Appeal of find. & disp. <input type="checkbox"/> Appeal of disp.	DATE				
8. 90/23/G NUMBER PLATE VIOLATION TO CONCEAL ID c90 §23						
DATE 11-22-02	PLEA <input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty <input type="checkbox"/> Nolo <input type="checkbox"/> New Plea: <input type="checkbox"/> Admits suff. facts	IMPRISONMENT AND OTHER DISPOSITION Fled				
	FINDING G JUDGE Teshaw	FINAL DISPOSITION <input type="checkbox"/> Discharged from probation <input type="checkbox"/> Dismissed at request of probation				
	<input type="checkbox"/> Cont. w/o finding until: <input type="checkbox"/> Appeal of find. & disp. <input type="checkbox"/> Appeal of disp.	DATE				
9. 90/34J UNINSURED MOTOR VEHICLE c90 §34J						
DATE 11-22-02	PLEA <input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty <input type="checkbox"/> Nolo <input type="checkbox"/> New Plea: <input type="checkbox"/> Admits suff. facts	IMPRISONMENT AND OTHER DISPOSITION Fled				
	FINDING G JUDGE Teshaw	FINAL DISPOSITION <input type="checkbox"/> Discharged from probation <input type="checkbox"/> Dismissed at request of probation				
	<input type="checkbox"/> Cont. w/o finding until: <input type="checkbox"/> Appeal of find. & disp. <input type="checkbox"/> Appeal of disp.	DATE				
10. 90/9/B UNREGISTERED MOTOR VEHICLE * c90 §9						
DATE 11-22-02	PLEA <input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty <input type="checkbox"/> Nolo <input type="checkbox"/> New Plea: <input type="checkbox"/> Admits suff. facts	IMPRISONMENT AND OTHER DISPOSITION Fled				
	FINDING G JUDGE Teshaw	FINAL DISPOSITION <input type="checkbox"/> Discharged from probation <input type="checkbox"/> Dismissed at request of probation				
	<input type="checkbox"/> Cont. w/o finding until: <input type="checkbox"/> Appeal of find. & disp. <input type="checkbox"/> Appeal of disp.	DATE				

DOCKET NUMBER: 0262CR005098

NAME: HOUDÉ, DANIEL J

SCHEDULING HISTORY

NO.	SCHEDULED DATE	SCHEDULED EVENT	RESULT		JUDGE	TAPE NO.	START	STOP
1	5-20-02	Arr	<input type="checkbox"/> Held	<input type="checkbox"/> Cont'd	Blacks	6202	789	
2	5-29-02	PT 408	<input type="checkbox"/> Held	<input type="checkbox"/> Cont'd				
3	7-31-02	Status	<input type="checkbox"/> Held	<input type="checkbox"/> Cont'd				
4	10-29-02	Status	<input type="checkbox"/> Held	<input type="checkbox"/> Cont'd	9-9-02 but feed reviewed			
5	9-17-02	Status	<input type="checkbox"/> Held	<input type="checkbox"/> Cont'd				
6	10-29-02	PC	<input type="checkbox"/> Held	<input type="checkbox"/> Cont'd	Howarth	1235	028	
7	11-15-02	TAD	<input type="checkbox"/> Held	<input type="checkbox"/> Cont'd				
8	11-22-02	411 81	<input type="checkbox"/> Held	<input type="checkbox"/> Cont'd	Fesler	1348	591	
9			<input type="checkbox"/> Held	<input type="checkbox"/> Cont'd				
10			<input type="checkbox"/> Held	<input type="checkbox"/> Cont'd				

ARR=Arraignment PT=Pretrial hearing CE=Discovery compliance and jury election T=Bench trial J=Jury Trial PC=Probable cause hearing M=Motion hearing SR=Status review
 SRP=Status review of payments FA=First appearance in jury session S=Sentencing CW=Continuance-without-finding scheduled to terminate P=Probation scheduled to terminate
 DFTA=Defendant failed to appear and was defaulted WAR=Warrant issued WARD=Default warrant issued WR=Warrant or default warrant recalled PR=Probation revocation hearing

ENTRY DATE

OTHER DOCKET ENTRIES

ADDITIONAL ASSESSMENTS IMPOSED OR WAIVED

DATE IMPOSED and JUDGE	TYPE OF ASSESSMENT	AMOUNT	DUE DATES and COMMENTS	✓ WAIVED
	Legal Counsel Fee (211D §2A ¶2)			
	Legal Counsel Contribution (211D §2)			
	Court Costs (280 §6)			
	Drug Analysis Fee (280 §6B)			
	OUI §24D Fee (90 §24D ¶9)			
	OUI Head Injury Surfine (90 §24[1][a][1] ¶2)			
	Probation Supervision Fee (276 §87A)			
	Default Warrant Assessment Fee (276 §30 ¶2)			
	Default Warrant Removal Fee (276 §30 ¶1)			

TENDER OF PLEA OR ADMISSION WAIVER OF RIGHTS	DOCKET NO.	NO. OF COUNTS	Trial Court of Massachusetts District Court Department
	02 - 5098	10	
INSTRUCTIONS: This form must be typed or printed clearly, completed prior to the Pretrial Hearing, signed by both counsel and submitted to the court by the defendant at or before the Pretrial Hearing.	NAME OF DEFENDANT		COURT DIVISION
	Daniel Houde		Worcester District Court 50 Harvard Street Worcester, MA. 01608

SECTION I

TENDER OF PLEA

Defendant in this case hereby tenders the following: ☒ PLEA OF GUILTY ☐ ADMISSION TO FACTS SUFFICIENT FOR A FINDING OF GUILTY conditioned on the dispositional terms indicated below. Include all proposed terms (guilty finding, finding of sufficient facts, continued without finding, dismissal, fine, costs, probation period and supervision terms, restitution amount including the identification of the recipient of restitution, and any sentence of incarceration, split sentence or suspended sentence, etc.). Number each count and specify terms for each count separately.

COUNT NO.	DEFENDANT'S DISPOSITIONAL TERMS (Check "Yes" if Prosecution agrees - Check "No" if Prosecution disagrees)	PROSECUTOR'S RECOMMENDATION (Required if Prosecutor disagrees with terms)
1	POSS class B - Guilty <input checked="" type="checkbox"/> YES 10 DAYS H.L. concurrent w 02/9060 <input type="checkbox"/>	
2	A+B DW - 90 DAYS <input checked="" type="checkbox"/> YES Guilty H.L. committed/concurrent w 02-9060 <input type="checkbox"/>	
3/6	A+B P/O - Guilty " " <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
7	Fail stop police <input checked="" type="checkbox"/> YES 6 - Filed <input type="checkbox"/> NO	
8/9	attach photos - Guilty Filed <input checked="" type="checkbox"/> YES Guilty Filed <input type="checkbox"/> NO	

10 WE HAVE CONSULTED WITH THE PROBATION DEPARTMENT REGARDING ANY PROBATION TERMS SET FORTH ABOVE.

SIGNATURE OF DEFENSE COUNSEL	DATE	SIGNATURE OF PROSECUTING OFFICE	DATE
X Daniel Houde		X Rob Imalle	11-21-02

SECTION II

PLEA OR ADMISSION ACCEPTED BY THE COURT

The Court ☒ ACCEPTS the tendered Plea or Admission on defendant's terms set forth in Section I, and will impose sentence in accordance with said terms, subject to submission of defendant's written WAIVER (see Section IV on reverse of this form), completion of the required oral COLLOQUY, a determination that there is a FACTUAL BASIS for the Plea or Admission, and notice of ALIEN RIGHTS.

SECTION III

PLEA OR ADMISSION REJECTED BY THE COURT

The Court ☐ REJECTS the defendant's dispositional terms set forth above and, in accordance with Mass. R. Crim. P. 12(c)(6), has set forth to the defendant the dispositional terms it would find acceptable, to wit:

DEFENDANT'S DECISION IF COURT REJECTS TENDERED PLEA OR ADMISSION:

Defendant **WITHDRAWS** the tendered Plea or Admission; the parties must complete and file a Pretrial Conference Report, a Pretrial Hearing must be conducted and a trial date scheduled, if necessary.

Defendant **ACCEPTS** terms set forth by the Court, a Plea or Admission will be accepted by the court and said dispositional terms imposed, subject to submission of defendant's written WAIVER (see Section IV on reverse of this form), completion of the required oral COLLOQUY, a determination that there is a FACTUAL BASIS for the Plea or Admission, and notice of ALIEN RIGHTS.

SIGNATURE OF JUDGE ACCEPTING OR REJECTING PLEA OR ADMISSION	DATE	SIGNATURE OF DEFENSE COUNSEL (If rejection decision made)	DATE
X Teresian	11/24/02	X	

SECTION IV DEFENDANT'S WAIVER OF RIGHTS (G.L.c. 263, § 6) & ALIEN RIGHTS NOTICE (G.L.c. 278, § 29D)

I, the undersigned defendant, understand and acknowledge that I am voluntarily giving up the right to be tried by a jury or a judge without a jury on these charges.

I have discussed my constitutional and other rights with my attorney. I understand that the jury would consist of six jurors chosen at random from the community, and that I could participate in selecting those jurors, who would determine unanimously whether I was guilty or not guilty. I understand that by entering my plea of guilty or admission, I will also be giving up my right to confront, cross-examine, and compel the attendance of witnesses; to present evidence in my defense; to remain silent and refuse to testify or provide evidence against myself by asserting my privilege against self-incrimination, all with the assistance of my defense attorney; and to be presumed innocent until proven guilty by the prosecution beyond a reasonable doubt.

I am aware of the nature and elements of the charge or charges to which I am entering my guilty plea or admission. I am also aware of the nature and range of the possible sentence or sentences.

My guilty plea or admission is not the result of force or threats. It is not the result of assurances or promises, other than any agreed-upon recommendation by the prosecution, as set forth in Section I of this form. I have decided to plead guilty, or admit to sufficient facts, voluntarily and freely.

I am not now under the influence of any drug, medication, liquor or other substance that would impair my ability to fully understand the constitutional and statutory rights that I am waiving when I plead guilty, or admit to sufficient facts to support a finding of guilty.

I understand that if I am not a citizen of the United States, conviction of this offense may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization, pursuant to the laws of the United States.

SIGNATURE OF DEFENDANT

DATE

X

SECTION V DEFENSE COUNSEL'S CERTIFICATE (G.L. c. 218, § 26A)

As required by G.L. c. 218, § 26A, I certify that as legal counsel to the defendant in this case, I have explained to the defendant the above-stated provisions of law regarding the defendant's waiver of jury trial and other rights so as to enable the defendant to tender his or her plea of guilty or admission knowingly, intelligently and voluntarily.

SIGNATURE OF DEFENSE COUNSEL

B.B.O. NO.

DATE

X

SECTION VI JUDGE'S CERTIFICATION

I, the undersigned Justice of the District Court, addressed the defendant directly in open court. I made appropriate inquiry into the education and background of the defendant and am satisfied that he or she fully understands all of his or her rights as set forth in Section IV of this form, and that he or she is not under the influence of any drug, medication, liquor or other substance that would impair his or her ability to fully understand those rights. I find, after an oral colloquy with the defendant, that the defendant has knowingly, intelligently and voluntarily waived all of his or her rights as explained during these proceedings and as set forth in this form.

After a hearing, I have found a factual basis for the charge(s) to which the defendant is pleading guilty or admitting and I have found that the facts as related by the prosecution and admitted by the defendant would support a conviction on the charges to which the plea or admission is made.

I further certify that the defendant was informed and advised that if he or she is not a citizen of the United States, a conviction of the offense with which he or she was charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization, pursuant to the laws of the United States.

SIGNATURE OF JUDGE

DATE

X

EXHIBIT C

APPLICATION
FOR COMPLAINTCase 4:08-cv-00075-FDS
ADULT
JUVENILE

Document 37-4

Filed 02/12/2009 Page 2 of 4
Trial Court of Massachusetts
District Court Department☒ ARREST ☐ HEARING ☐ SUMMONS ☐ WARRANT

The within named complainant requests that a complaint issue against the within named defendant, charging said defendant with the offense(s) listed below.

COURT DIVISION

WORCESTER DISTRICT COURT
WORCESTER COUNTY
50 HARVARD STREET
WORCESTER, MA 01608

DATE OF APPLICATION

05/20/2002

DATE OF OFFENSE

05/20/2002

PLACE OF OFFENSE

165 GRAFTON ST

NAME OF COMPLAINANT

PO ROBERT TURGEON

799-8600

NO.

OFFENSE

G.L. Ch.
and Sec.

ADDRESS AND ZIP CODE OF COMPLAINANT

Worcester Police Department
9-11 Lincoln Square
Worcester, MA 01608

1.

ILLEGAL POSS. OF CLASS B
SUBSTANCE (822)

94C-34

2.

A&B BY DANGEROUS WEAPON
(617)

265-15A

3.

A&B ON A POLICE OFFICER
(609)

265-13D

4.

A&B ON A POLICE OFFICER
(609)

265-13D

NAME, ADDRESS AND ZIP CODE OF DEFENDANT

HOUDE, DANIEL J *

M#M9541178

18 ORIENT ST, #1

A#A0203391

WORCESTER, MA 01604

I#I0254157

COURT USE
ONLY →A hearing upon this complaint application
will be held at the above court address on

DATE OF HEARING

AT

TIME OF HEARING

← COURT USE
ONLY

CASE PARTICULARS — BE SPECIFIC

NO.	NAME OF VICTIM Owner of property, person assaulted, etc.	DESCRIPTION OF PROPERTY Goods stolen, what destroyed, etc.	VALUE OR PROPERTY Over or under \$250.	TYPE OF CONTROLLED SUBSTANCE OR WEAPON Marijuana, gun, etc.
1				(1 BAGG IE) CRACK COCAINE
2	PO. STEVE GUNN			SHOT POST
3	PO. ROBERT TURGEON			FIST
4	PO. KEVIN JOHNSON			FIST

OTHER REMARKS: [This is page 1 of 3]
None.X _____
SIGNATURE OF COMPLAINANT

DEFENDANT IDENTIFICATION INFORMATION — Complete data below if known.

<div>██████████</div>	PLACE OF BIRTH SPFLD , MA	SOCIAL SECURITY NUMBER <div>██████████</div>	SEX M	RACE WHI	HEIGHT 5 8	WEIGHT 150	EYES BRO	HAIR BRO
OCCUPATION SELD-EMPLOYED	EMPLOYER/SCHOOL VENDOR	MOTHER'S NAME (MAIDEN) LEPRIE , MARGARET			FATHER'S NAME HOUDE , DONALD			

↓ COURT USE ONLY ↓

DATE	DISPOSITION	AUTHORIZED BY
	NO PROCESS TO ISSUE <input type="checkbox"/> At request of complainant <input type="checkbox"/> Complainant failed to prosecute <input type="checkbox"/> Insufficient evidence having been presented	
	PROCESS TO ISSUE <input type="checkbox"/> Sufficient evidence presented <input type="checkbox"/> Defendant failed to appear	TYPE OF PROCESS <input type="checkbox"/> Warrant <input type="checkbox"/> Summons returnable _____
	<input type="checkbox"/> Continued to _____	

COMMENTS

<input checked="" type="checkbox"/> ARREST <input type="checkbox"/> HEARING <input type="checkbox"/> SUMMONS <input type="checkbox"/> WARRANT		COURT DIVISION WORCESTER DISTRICT COURT WORCESTER COUNTY 50 HARVARD STREET WORCESTER, MA 01608	
The within named complainant requests that a complaint issue against the within named defendant, charging said defendant with the offense(s) listed below.			
DATE OF APPLICATION 05/20/2002	DATE OF OFFENSE 05/20/2002	PLACE OF OFFENSE 165 GRAFTON ST	
NAME OF COMPLAINANT PO ROBERT TURGEON 799-8600		NO.	OFFENSE
ADDRESS AND ZIP CODE OF COMPLAINANT Worcester Police Department 9-11 Lincoln Square Worcester, MA 01608		1.	A&B ON A POLICE OFFICER (609)
		2.	RESISTING ARREST
NAME, ADDRESS AND ZIP CODE OF DEFENDANT HOUE, DANIEL J * M#M9541178 18 ORIENT ST, #1 A#A0203391 WORCESTER, MA 01604 I#I0254157		3.	FAIL. TO STOP FOR POLICE, OPER MV (122)
		4.	ATTACHING PLATES TO A MV (119)
COURT USE ONLY →	A hearing upon this complaint application will be held at the above court address on		DATE OF HEARING TIME OF HEARING AT
COURT USE ONLY ←			

CASE PARTICULARS — BE SPECIFIC

NAME OF VICTIM Owner of property, person assaulted, etc.	DESCRIPTION OF PROPERTY Goods stolen, what destroyed, etc.	VALUE OR PROPERTY Over or under \$250.	TYPE OF CONTROLLED SUBSTANCE OR WEAPON Marijuana, gun, etc.
P.C. BRAG HAUGRAU			FIST

OTHER REMARKS: [This is page 2 of 3]

X _____
SIGNATURE OF COMPLAINANT

DEFENDANT IDENTIFICATION INFORMATION — Complete data below if known.

DATE OF BIRTH 03/14/1964	PLACE OF BIRTH SPFLD, MA	021-50-5152	SEX M	RACE WHI	HEIGHT 5 8	WEIGHT 150	EYES BRO	HAIR BRO
OCCUPATION SELF-EMPLOYED	EMPLOYER/SCHOOL VENDOR	MOTHER'S NAME (MAIDEN) LEPRIE, MARGARET		FATHER'S NAME HOUE, DONALD				

↓ COURT USE ONLY ↓

DATE	DISPOSITION	AUTHORIZED BY
	NO PROCESS TO ISSUE <input type="checkbox"/> At request of complainant <input type="checkbox"/> Complainant failed to prosecute <input type="checkbox"/> Insufficient evidence having been presented	
	PROCESS TO ISSUE <input type="checkbox"/> Sufficient evidence presented <input type="checkbox"/> Defendant failed to appear	TYPE OF PROCESS <input type="checkbox"/> Warrant <input type="checkbox"/> Summons returnable
	<input type="checkbox"/> Continued to	

COMMENTS

MASSACHUSETTS UNIFORM CITATION



10F2

DATE CITATION WRITTEN 052002		AGENCY CODE WOR		OFFICER I.D. NUMBER T749		COURT CODE 62		TYPE OF CITATION MOTOR VEH <input checked="" type="checkbox"/> OPER <input type="checkbox"/> OWNER		K 0773490	
MOTOR VEHICLE LICENSE NO. OF VIOLATOR S94563027		STATE MA		CLASS D		CDL LICENSE <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		RACE W		SEX M	
VIOLATOR NAME (Last) Houde		(First) DANIEL		(Initial) J		DATE OF BIRTH 032464		NON-INVENTORY MV SEARCH <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES		CODE	
ADDRESS 18 ORIENT ST		CITY/TOWN WORCESTER		STATE MA		ZIP 01604					
PLATE TYPE A		MOTOR VEHICLE REGISTRATION NO. CA89092		STATE MA		CDL VEHICLE <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		HAZARDOUS MATERIAL <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		MAKE AND TYPE FORD AUTHM	
DATE OF OFFENSE 052002		LOCATION OF OFFENSE (include #, st, hwy, city or town) 165 GRAFTON ST WORCESTER		TIME OF OFFENSE 00:44		<input checked="" type="checkbox"/> AM <input type="checkbox"/> PM		ACCIDENT <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		COMMENT	
A. CHAP/SEC/SUB 90/15		<input checked="" type="checkbox"/> CRIM <input type="checkbox"/> CIVIL		DESCRIPTION OF OFFENSE FAIL TO STOP FOR POLICE		ASSESSMENT \$		JUDGMENT		JUDGMENT DATE	
B. 90/23		<input checked="" type="checkbox"/> CRIM <input type="checkbox"/> CIVIL		ILLEGALLY ATTACHING PLATES		\$					
C. 90/34T		<input checked="" type="checkbox"/> CRIM <input type="checkbox"/> CIVIL		OPERATING UNINSURED M/V		\$					
D. SPEEDING <input type="checkbox"/> 90/17 <input type="checkbox"/> 90/18		CIVIL		MPH IN A ZONE		<input type="checkbox"/> POSTED <input type="checkbox"/> CLOCKED <input type="checkbox"/> NOT POSTED <input type="checkbox"/> RADAR <input type="checkbox"/> ESTIMATED		\$			
SPEEDING ASSESSMENTS INCLUDE A \$25 SURCHARGE FOR THE HEAD INJURY TRUST FUND								TOTAL DUE \$		DOCKET NUMBER	
OFFICER CHECK ONE ONLY		<input type="checkbox"/> ALL CIVIL INFRACTIONS (See instruction A on back)		<input type="checkbox"/> CRIMINAL APPLICATION (See instruction B on back)		<input checked="" type="checkbox"/> ARREST		<input type="checkbox"/> WARNING (No action required by violator)		COURT ADDRESS 50 HARVARD ST WORCESTER, MA	
OFFICER CERTIFIES X <i>Po [Signature]</i> #292		<input checked="" type="checkbox"/> IN HAND TO VIOL		<input type="checkbox"/> MAILED TO VIOL		<input type="checkbox"/> IN HAND TO VIOLATOR'S AGENT					
VIOLATOR/AGENT ACKNOWLEDGES RECEIPT OF CITATION X											

RMV COPY (IF CIVIL) OR COURT COPY (IF CRIM.)

MASSACHUSETTS UNIFORM CITATION



20F2

DATE CITATION WRITTEN 052002		AGENCY CODE WOR		OFFICER I.D. NUMBER T749		COURT CODE 62		TYPE OF CITATION MOTOR VEH <input checked="" type="checkbox"/> OPER <input type="checkbox"/> OWNER		K 0773491	
MOTOR VEHICLE LICENSE NO. OF VIOLATOR S94563027		STATE MA		CLASS D		CDL LICENSE <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		RACE W		SEX M	
VIOLATOR NAME (Last) Houde		(First) DANIEL		(Initial) J		DATE OF BIRTH 032464		NON-INVENTORY MV SEARCH <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES		CODE	
ADDRESS 18 ORIENT ST		CITY/TOWN WORCESTER		STATE MA		ZIP 01604					
PLATE TYPE A		MOTOR VEHICLE REGISTRATION NO. CA89092		STATE MA		CDL VEHICLE <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		HAZARDOUS MATERIAL <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		MAKE AND TYPE FORD AUTHM	
DATE OF OFFENSE 052002		LOCATION OF OFFENSE (include #, st, hwy, city or town) 165 GRAFTON ST WORCESTER		TIME OF OFFENSE 00:44		<input checked="" type="checkbox"/> AM <input type="checkbox"/> PM		ACCIDENT <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		COMMENT	
A. CHAP/SEC/SUB 90/19		<input checked="" type="checkbox"/> CRIM <input type="checkbox"/> CIVIL		DESCRIPTION OF OFFENSE OP UNRES. STREETS M/V		ASSESSMENT \$		JUDGMENT		JUDGMENT DATE	
B.		<input type="checkbox"/> CRIM <input type="checkbox"/> CIVIL				\$					
C.		<input type="checkbox"/> CRIM <input type="checkbox"/> CIVIL				\$					
D. SPEEDING <input type="checkbox"/> 90/17 <input type="checkbox"/> 90/18		CIVIL		MPH IN A ZONE		<input type="checkbox"/> POSTED <input type="checkbox"/> CLOCKED <input type="checkbox"/> NOT POSTED <input type="checkbox"/> RADAR <input type="checkbox"/> ESTIMATED		\$			
SPEEDING ASSESSMENTS INCLUDE A \$25 SURCHARGE FOR THE HEAD INJURY TRUST FUND								TOTAL DUE \$		DOCKET NUMBER	
OFFICER CHECK ONE ONLY		<input type="checkbox"/> ALL CIVIL INFRACTIONS (See instruction A on back)		<input type="checkbox"/> CRIMINAL APPLICATION (See instruction B on back)		<input checked="" type="checkbox"/> ARREST		<input type="checkbox"/> WARNING (No action required by violator)		COURT ADDRESS 50 HARVARD ST WORCESTER MA	
OFFICER CERTIFIES X <i>Po [Signature]</i> #292		<input checked="" type="checkbox"/> IN HAND TO VIOL		<input type="checkbox"/> MAILED TO VIOL		<input type="checkbox"/> IN HAND TO VIOLATOR'S AGENT					
VIOLATOR/AGENT ACKNOWLEDGES RECEIPT OF CITATION X											

RMV COPY (IF CIVIL) OR COURT COPY (IF CRIM.)

**Worcester Police Department
Incident Report**

May 20, 2002

Monday 03:26

Single Narrative

INCIDENT LOCAL # PRIORITY ACC REP	ACTIVITY ADDRESS (JURISDICTION) DISPOSITION	OFFICER(S)	RECEIVED DISPATCHED ARRIVED CLEARED	DISPATCHER SUPERVISOR NATURE INCIDENT TYPE
I0254157	PATROL INITIATED	TURGEON	05/20/2002, 00:43	COLES
4	165 GRAFTON ST	GUNNERSONS	05/20/2002, 00:44	
No No	Cross: 1 CORAL ST @156	JOHANSONKR	05/20/2002, 00:45	SUSPICIOUS MV
	1 PENN AV @208	DANDREAMD	05/20/2002, 01:13	DISORDERLY PERS
	WORCESTER, MA, 01604 (04)	HALLORAN		CT: COLES
	ARREST			

Caller's Info: 06L OTA

Reported as: SUSPICIOUS MV Found as: DISORDERLY PERS
Domestic Abuse: No

Dispatcher Remarks:

06L CALLED OUT W/CAMPER PLATE MA REG#89092...JDC./... 1 PERSON IN CUSTODY...JDC./... @0046 - RT09L CALLED OUT FOR THE WAGON - CELLROOM NOTIFIED AND OTW....JDC./... PER RT08L - 1 W/F W/BROWN HAIR AND EITHER A BLUE OR BLACK COAT RAN FROM THE SCENE...SEARCHING THE AREA FOR THE FEMALE. JDC./.... PER RT08L - THE FEMALE HEADED UP CORAL ST...JDC./.... SHE IS MEDIUM TO HEAVY BLD...POSS. TRYING TO HEAD BACK TO ORIENT ST...JDC./.... WAGON 84 HEADED TO CHARLIES TO PICK UP FEMALE ...COMP ARREST....BS CHARLIES LOC AT 240 GRAFTON...BS S/M 82614...BS E/M 82615...BS

ARRESTED RUDY, RENEE E *
(Female) 9 FREELAND ST Apt: 2R
M0037351 WORCESTER MA 01603
Phone: 508-363-3942 Race: WHI
Commnt: ARRESTED: SUSPICIOUS MV

License: [REDACTED] (MA)
SSN: [REDACTED]

DOB: 10/28/1968 Age: 33

ARRESTED HOUDE, DANIEL J *
(Male) 18 ORIENT ST Apt: 1
M9541178 WORCESTER MA 01604
Phone: 754-3477 Race: WHI
Commnt: ARREST- M.V. / 94C

License: [REDACTED]

DOB: 03/14/1964 Age: 38

VICTIM TURGEON, ROBERT
(Male) 911 LINCOLN ST
M0080319 WORCESTER MA 01605
Phone: 799-8669
Commnt: VICTIM A&B

License: None

DOB: None Recorded

VICTIM GUNNERSON, STEPHEN
(Male) 911 LINCOLN SQ
M9907826 WORCESTER MA 01608
Phone: 799-8669 Race: WHI
Commnt: VIC. A&B D.W.

License: None

DOB: None Recorded

Single Narrative

INCIDENT LOCAL # PRIORITY ACC REP	ACTIVITY ADDRESS (JURISDICTION) DISPOSITION	OFFICER(S)	RECEIVED DISPATCHED ARRIVED CLEARED	DISPATCHER SUPERVISOR NATURE INCIDENT TYPE
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Incident I0254157 (continued)

Persons:

VICTIM HALLORAN, BRIAN License: [REDACTED] (MA)
 (Male) 9 LINCOLN SQ
 M9713688 WORCESTER MA 01608
 Phone: 799-8669 Race: WHI DOB: 04/22/1971 Age: 31
 Commt: VIC. A&B

VICTIM JOHANSON, KEVIN License: None
 (Male) 911 LINCOLN SQ
 M9928587 WORCESTER MA 01608
 Phone: 799-8620 DOB: None Recorded
 Commt: VIC. A&B

Narrative(s):

Narr. 1: PO ROBERT TURGEON Division: None Status: Open [I0254157]
 Title: ARREST NARRATIVE Entered: PO ROBERT TURGEON Date: 05/20/02
 Reviewed: No officer Edit: 05/20/02

ON 05/20/02 AT APPROXAMETLY 0043 HRS. I WAS ON PATROL IN A MARKED CRUISER ON GRAFTON ST. WHEN I OBSERVED A FORD CAMPER TRAVELING WEST ON GRAFTON ST. WHEN I NOTICED THAT THE LICENSE PLATE ATTACHED TO THE REAR OF THE CAMPER, MA. 89092, WAS HANGING OFF. THE M.V. PULLED INTO A GAS STATION AT 263 GRAFTON ST. I PULLED INTO THE SAME PARKING LOT AND NOTICED THAT THE FRONT PLATE, MA. 82903, WAS DIFFERENT FROM THE FRONT PLATE. AS THE VEHICLE LEFT THE LOT AND CONTINUED DOWN GRAFTON ST. WHEN I ACTIVATED MY EMERGENCY LIGHTS AND ATTEMPTED TO STOP THE VEHICLE. THE VEHICLE REFUSED TO STOP AND CONTINUED DOWN GRAFTON ST. AND DROVE INTO A BACK PARKING LOT AT 165 GRAFTON ST. I ADVISED DISPATCH AND ASKED FOR ADDITIONAL CARS. P.O.'S STEVE GUNNERSON, KEVIN JOHANSON ARRIVED TO ASSIST. I APPROACHED THE DRIVERS SIDE AND ASKED THE DRIVER TO LOWER HIS WINDOW IT WAS AT THIS POINT THAT THE DRIVER, LATER IDENTIFIED AS DANIEL HOUE (03/14/64), REACHED OVER AND LOCKED HIS DOOR. FEARING FOR THE MY SAFETY AND THE SAFETY OF THE OFFICERS PRESENT I ORDERED HOUE TO UNLOCK THE DOOR AND EXIT THE VEHICLE, HE REFUSED, HOUE KEPT HIS HANDS IN HIS WAIST AREA ATTEMPTING TO HIDE SOMETHING. I REPEATED THIS ORDER SEVERAL MORE TIMES WITHOUT COMPLIANCE, P.O. JOHANSON STATED THAT HE WAS GOING TO ENTER THE VEHICLE THROUGH AN UNLOCKED SIDE DOOR.

AS JOHANSON ENTERED THE M.V. HE UNLOCKED THE DOOR AND WE ATTEMPTED TO GET HOUE OUT OF THE VEHICLE. AT FIRST HE REFUSED TO LET GO OF THE STEERING WHEEL WITH HIS RIGHT HAND WHILE KEEPING HIS LEFT HAND CLOSED. HE THEN BEGAN TO VIOLENTLY STRUGGLE, FLAILING AND SWINGING HIS ARMS. AT SOME POINT IN THE BEGINNING OF THE STRUGGLE P.O. GUNNERSON WAS AT THE PASSENGER DOOR. IN THE SEAT WAS A FEMALE, LATER IDENTIFIED AS RENEE RUDY (10/28/68), WHILE JOHANSON AND I WERE STRUGGLING WITH HOUE RUDY ATTEMPTED TO EXIT THE VEHICLE WITH GUNNERSON STANDING THERE. GUNNERSON ADVISED HER TO STAY IN THE VEHICLE AT WHICH POINT

Single Narrative

INCIDENT LOCAL # PRIORITY ACC REP	ACTIVITY ADDRESS (JURISDICTION) DISPOSITION	OFFICER(S)	RECEIVED DISPATCHED ARRIVED CLEARED	DISPATCHER SUPERVISOR NATURE INCIDENT TYPE
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Narrative 1 (continued) By: PO ROBERT TURGEON

Incident I0254157

RUDY FLUNG OPEN THE DOOR VIOLENTLY AND STRUCK P.O. GUNNERSON RIGHT ARM AND SHOULDER. GUNNERSON, SEEING US STRUGGLING WITH HOUDE, ENTERED THE M.V. TO ASSIST US. RUDY FLED THE SCENE ON FOOT AND WAS FOUND AT UNCLE CHARLIE'S TAVERN ON GRAFTON ST. WHERE SHE BECAME LOUD AND BOISTEROUS CAUSING A DISTURBANCE INSIDE THE BUSINESS.

P.O.'S JOHANSON, GUNNERSON AND I CONTINUED TO ATTEMPT TO PLACE HOUDE INTO CUSTODY. HE WAS TOLD SEVERAL TIMES BY THE THREE OF US TO STOP RESISTING AND PUT HIS HANDS BEHIND HIS BACK. DURING THIS TIME HOUDE PUNCHED ME IN THE RIBS AND PUNCHED P.O. JOHANSON IN THE NECK AREA. HE ALSO KICKED P.O. GUNNERSON IN THE CHEST. OTHER OFFICERS HEARD THE STRUGGLE OVER OUR PORTABLE RADIOS AND ARRIVED AT THE SCENE TO ASSIST. P.O.'S BRIAN HALLORAN, MATTHEW D'ANDREA, THOMAS DUFFY AND SEAN MCCANN ARRIVED AND BEGAN TO ASSIST IN PUTTING HOUDE INTO CUSTODY. WHEN THESE OFFICERS ARRIVED WE WERE STILL IN THE CAMPER AT THE SIDE DOOR, I OBSERVED HOUDE DROP SOMETHING OUT OF HIS STILL CLOSED LEFT HAND. I WAS ABLE TO RECOVER THIS ITEM AND UPON FURTHER INSPECTION IT WAS DISCOVERED TO BE A SMALL PLASTIC BAGGIE "CORNER" WHICH CONTAINED A HARDENED WHITE SUBSTANCE, WHICH THROUGH MY TRAINING AND EXPERIENCE I BELIEVED TO BE CRACK COCAINE. WE CONTINUED TO FIGHT WITH HOUDE AND AT THE POINT WHEN HOUDE WAS BEING TAKEN FROM THE CAMPER HE LOST HIS FOOTING AND LANDED ON THE PAVEMENT. HOUDE CONTINUED TO STRUGGLE FOR SEVERAL MORE MINUTES AT WHICH POINT P.O. DUFFY ADVISED HOUDE THAT IF HE DID NOT COMPLY THAT HE WOULD BE SPRAYED WITH O.C. AFTER ANOTHER WARNING P.O. DUFFY SPRAYED HOUDE WITH HIS DEPARTMENT ISSUE O.C. SPRAY FOR A ONE SECOND BURST INTO TO THE FACE AREA. HOUDE BEGAN TO COMPLY AND WAS PLACED IN HANDCUFFS. HE WAS REMOVED FROM THE AREA OF O.C. SPRAY ADVISED OF ITS EFFECTS. SOMETIME DURING THE ALTERCATION HOUDE SUFFERED A LACERATION ABOVE HIS EYE.

THE PATROL WAGON ARRIVED AND IMMEDIATELY TRANSPORTED HOUDE TO UMASS MEMORIAL FOR TREATMENT FOR HIS LACERATION AND THE EFFECTS OF THE O.C. SPRAY. THE FEMALE, RENEE RUDY WAS ALSO PLACED UNDER ARREST AND TRANSPORTED TO THE CELLROOM FOR BOOKING.

SEVERAL OFFICERS WERE EXPOSED TO HOUDE BLOOD AND WE WERE MET BY MEDIC 1 AND THEY ASSISTED US IN CLEANING OFF THE BLOOD. THEY ALSO EXAMINED P.O. HALLORAN AND MYSELF FOR INJURIES WE SUFFERED IN THE ALTERCATION. HALLORAN SUFFERED A CONTUSION TO HIS FOREARM AND ALSO AN ABRASION TO HIS ELBOW. HE DID NOT SEEK FURTHER TREATMENT. I SUFFERED AN INJURY TO MY RIGHT HAND WHICH THE PARAMEDIC STATED COULD BE A "BOXER'S FRACTURE" AND HE ADVISED ME OF MY OPTIONS. AT THIS TIME I DID NOT SEEK FURTHER TREATMENT.

THE LICENSE PLATES WERE RUN THROUGH CJIS AND THE REAR PLATE, 89092, CAME BACK AS NO MATCHING RECORD FOUND. THE FRONT PLATE, 82903, CAME BACK EXPIRED TO A MARY STELLATO OF MATTAPOISET MA. AT THIS TIME SHE COULD NOT BE CONTACTED. BOTH PLATES WERE CONFISCATED AND WILL BE TURNED INTO THE REGISTRY OF MOTOR VEHICLES. THE COCAINE WAS TURNED IN AT THE SERVICE DIVISION TO BE PICKED UP BY THE VICE SQUAD AND SENT OUT FOR ANALYSIS.

RENEE RUDY'S CHARGES ARE:

1. DISORDERLY BEHAVIOR
2. DISTURBING THE PEACE
3. A&B BY DANGEROUS WEAPON (TO WIT: CAR DOOR)

Worcester Police Department
Incident Report

May 20, 2002

Monday 03:26

Single Narrative

INCIDENT LOCAL # PRIORITY ACC REP	ACTIVITY ADDRESS (JURISDICTION) DISPOSITION	OFFICER(S)	RECEIVED DISPATCHED ARRIVED CLEARED	DISPATCHER SUPERVISOR NATURE INCIDENT TYPE
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Narrative 1 (continued) By: PO ROBERT TURGEON Incident I0254157

4. RESISTING ARREST
5. WARRANT- UNLICENSED OPERATION/SPEEDING (DEF. DOCKET 0062CR006216)

DANIEL HOUDE'S CHARGES ARE:

1. ILLEGAL POSS. OF A CLASS B SUB.
2. A&B BY DANGEROUS WEAPON (TO WIT: SHOD FOOT)
3. A&B ON A POLICE OFFICER
4. A&B ON A POLICE OFFICER
5. A&B ON A POLICE OFFICER
6. RESISTING ARREST
7. FAILURE TO STOP FOR A POLICE OFFICER
8. ILLEGALLY ATTACHING PLATES
9. OPER. AN UNREG. M.V.
10. OPER. AN UNINSURED M.V. (CITATIONS K0773490 AND K0773491 WERE

ISSUED)

THE CAMPER WAS LEFT AT THE SCENE BECAUSE IT WAS ON PRIVATE PROPERTY.
DISPATCH WAS NOTIFIED IN THE EVENT THE OWNER OF THE PROPERTY CALLED.

REPORTING OFFICER

DATE

REVIEWING OFFICIAL

DATE

CRIMINAL COMPLAINT

0262CR005098

Case 4:05-cv-40075-EDS Document 37-4

Filed 02/12/2007 Page 9 of 11

Trial Court of Massachusetts

Worcester District Court

TO ANY JUSTICE OR CLERK-MAGISTRATE
OF THE WORCESTER DISTRICT COURT

The undersigned complainant, on behalf of the Commonwealth, on oath complains that on the date and at the location stated herein the defendant did commit the offense(s) listed below.

DEFENDANT

HOUDE, DANIEL J
18 ORIENT ST #1
WORCESTER, MA 01604

DATE OF BIRTH	SEX	RACE	HEIGHT	WEIGHT	EYES	HAIR
03/14/1964	M	W	5'08"	150	BRO	BRO

INCIDENT REPORT #	SOCIAL SECURITY #
I0254157	021-50-5152

DATE OF OFFENSE	PLACE OF OFFENSE
05/20/2002	WORCESTER

COMPLAINANT	POLICE DEPARTMENT
SWIFT, LT BARBARA	WORCESTER PD

DATE OF COMPLAINT	RETURN DATE AND TIME
05/20/2002	

COUNT-OFFENSE

1. 94C/34/C DRUG, POSSESS CLASS B c94C §34

on 05/20/2002, not being authorized by law, did knowingly or intentionally possess a controlled substance in Class B of G.L. c.94C, §31, to wit: COCAINE, in violation of G.L. c.94C, §34. (PENALTY: imprisonment not more than 1 year; or not more than \$1000; or both.)

COUNT-OFFENSE

2. 265/15A/A A&B WITH DANGEROUS WEAPON c265 §15A(b)

on 05/20/2002 did, by means of a dangerous weapon, a SHOD FOOT, assault and beat STEVE GUNNERSON, in violation of G.L. c.265, §15A(b). (PENALTY: state prison not more than 10 years; or jail not more than 2½ years; or not more than \$1000. District Court has final jurisdiction under G.L. c.218, § 26.)

COUNT-OFFENSE

3. 265/13D/A A&B ON POLICE OFFICER c265 §13D

on 05/20/2002 did assault and beat ROBERT TURGEON, a police officer who was then engaged in the performance of his or her duties, in violation of G.L. c.265, §13D. (PENALTY: house of correction not less than 90 days, not more than 2½ years; or not less than \$500, not more than \$5000.)

COUNT-OFFENSE

4. 265/13D/A A&B ON POLICE OFFICER c265 §13D

on 05/20/2002 did assault and beat KEVIN JOHNSON, a police officer who was then engaged in the performance of his or her duties, in violation of G.L. c.265, §13D. (PENALTY: house of correction not less than 90 days, not more than 2½ years; or not less than \$500, not more than \$5000.)

COMPLAINANT

X

SWORN TO BEFORE CLERK-MAGISTRATE

X

ON (DATE)

5-20-02

TOTAL COUNTS

10

FIRST JUSTICE

Hon. Elliott Zide

COURT
ADDRESS

Worcester District Court
50 Harvard Street
Worcester, MA 01608

A TRUE CLERK-MAGISTRATE/ASST. CLERK

COPY

ATTEST: X

ON (DATE)

ADDITIONAL COUNTS

Page 2 Of 2

0262CR005098

COUNT-OFFENSE

5. 265/13D/A A&B ON POLICE OFFICER c265 §13D

on 05/20/2002 did assault and beat BRIAN HALLORAN, a police officer who was then engaged in the performance of his or her duties, in violation of G.L. c.265, §13D. (PENALTY: house of correction not less than 90 days, not more than 2½ years; or not less than \$500, not more than \$5000.)

COUNT-OFFENSE

6. 268/32B RESIST ARREST c268 §32B

on 05/20/2002 did knowingly prevent or attempt to prevent a police officer, as defined in G.L. c. 268, §32B(c), who was acting under color of his or her official authority, from effecting an arrest, by: (1) using or threatening to use physical force or violence against the police officer or another; or (2) using some other means which created a substantial risk of causing bodily injury to such police officer or another, in violation of G.L. c. 268, §32B. (PENALTY: jail or house of correction for not more than 2½ years; or not more than \$500; or both.)

COUNT-OFFENSE

7. 90/25/D STOP FOR POLICE, FAIL c90 §25

on 05/20/2002, while operating or in charge of a motor vehicle, did refuse or neglect to stop when signalled to stop by a police officer who was in uniform or who displayed his or her badge conspicuously on the outside of his or her outer coat or garment, in violation of G.L. c.90, §25. (PENALTY: \$100.)

COUNT-OFFENSE

8. 90/23/G NUMBER PLATE VIOLATION TO CONCEAL ID c90 §23

on 05/20/2002, with intent to conceal the identity of a motor vehicle or trailer: (1) did attach or permit to be attached thereto a number plate assigned to another motor vehicle or trailer; or (2) did obscure or permit to be obscured the figures on a number plate attached thereto; or (3) did fail to display thereon the number plate and the register number duly issued therefor, in violation of G.L. c.90, §23. (PENALTY: imprisonment not more than 10 days; or not more than \$100; or both.)

COUNT-OFFENSE

9. 90/34J UNINSURED MOTOR VEHICLE c90 §34J

on 05/20/2002 did operate, or permit to be operated, or permit to remain, on a public or private way a motor vehicle or trailer that was subject to the provisions of G.L. c.90, §1A during such time as the motor vehicle liability policy or bond or deposit required by G.L. c.90 had not been provided and maintained in accordance therewith, in violation of G.L. c.90, §34J. (PENALTY: house of correction not more than 1 year; or not less than \$500, not more than \$5000; or both; and shall be liable to pay to the Safe Driver Insurance Plan the greater of \$500 or one year's premium for compulsory motor vehicle insurance for the highest rated territory and class or risk; RMV shall suspend license for 60 days, or for 1 year upon 2nd or subsequent offense within 6 years.)

COUNT-OFFENSE

10. 90/9/B UNREGISTERED MOTOR VEHICLE * c90 §9

NOTE: THIS IS A CIVIL MV INFRACTION, SET FORTH HERE FOR PROCEDURAL PURPOSES ONLY. on 05/20/2002 did operate, push, draw or tow a motor vehicle or trailer, or being the owner or custodian of a motor vehicle or trailer did permit it to be operated, pushed, drawn or towed or to remain, on a way, as defined by G.L. c.90, §1, without such vehicle or trailer being registered according to law, not being exempted from such requirement by law, in violation of G.L. c.90, §9. (CIVIL ASSESSMENT: \$100; 2nd offense: \$1000.)

COMPLAINANT

X

SWORN TO BEFORE CLERK-MAGISTRATE/ASST. CLERK

X

ON (DATE)

5-20-02

DOCKET NUMBER

0262CR005098

FINDING OF JUDGE -- DETERMINATION OF INDIGENCY

After considering the report and recommendation of the probation officer or other appropriate court employee, and after interrogating the defendant named in the complaint on the reverse side, if appropriate, based upon the standards in Supreme Judicial Court Rule 3:10, **I FIND THAT THE DEFENDANT IS:**

☐ **INDIGENT** because the defendant:

- ☐ receives Aid to Families with Dependent Children (AFDC).
- ☐ receives Emergency Aid to Elderly, Disabled and Children (EAEDC).
- ☐ receives poverty-related veterans' benefits.
- ☐ receives food stamps.
- ☐ receives refugee resettlement benefits.
- ☐ receives Medicaid.
- ☐ receives Supplemental Security Income (SSI).
- ☐ is a patient in a mental health facility or treatment center (or is the subject of a proceeding for admission to such a facility) and lacks available funds.
- ☐ is serving a sentence in a correctional institution and has no available funds.
- ☐ is held in custody in a jail and has no available funds.
- ☐ has an annual income, after taxes, 125% or less of the current poverty threshold referred to in G.L. c. 261, § 27A(b).
- ☐ is determined to be indigent pursuant to S.J.C. Rule 3:10, Section 4(b) [Judge's Section 4(b) findings on the record are appended].

☐ **INDIGENT BUT ABLE TO CONTRIBUTE**, and is therefore ordered to pay

\$ _____ toward the cost of counsel
because the defendant:

- ☐ has an annual income, after taxes, of more than 125% and less than 250% of the current poverty threshold referred to in G.L. c. 261, § 27A(b).
- ☐ is charged with a felony within the jurisdiction of the Superior Court and has available funds sufficient to pay a portion of the anticipated cost of counsel.
- ☐ is determined to be indigent but able to contribute pursuant to S.J.C. Rule 3:10, Section 4(b) [Judge's Section 4(b) findings on the record are appended].

☐ **NOT INDIGENT** and is able to pay the anticipated cost of counsel [Judge's findings on the record are appended if this finding is pursuant to S.J.C. Rule 3:10, Section 4(b)].

Date

District Court Justice

CERTIFICATE OF JUDGE -- WAIVER OF COUNSEL

I hereby certify that the defendant named in the complaint on the reverse side has been informed of his/her right to counsel in accordance with Supreme Judicial Court Rule 3:10 and G.L. c. 211D, §5; that he/she has knowingly elected to proceed without a lawyer, and that he/she has:

- ☐ Executed a waiver of counsel in my presence.
- ☐ Refused to sign a waiver.

Date

District Court Justice

EXHIBIT D

VOL. I
Pp. 1 - 75
Exhibits 1 - 1

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF MASSACHUSETTS

C.A. NO. 05-40075FDS

* * * * *

DANIEL HOUDE,

Plaintiff

VS.

ROBERT TURGEON, STEPHEN
GUNNERSON, KEVIN JOHANSON,
MATTHEW D'ANDREA, BRIAN HALLORAN,
THOMAS DUFFY, SEAN McCANN, AND
CITY OF WORCESTER,

Defendants

* * * * *

Deposition of SEAN McCANN, a witness called by
counsel for the Plaintiff, pursuant to the applicable
rules, before Lorreen Hollingsworth, CSR/RPR,
CSR NO. 114793, and Notary Public in and for the
Commonwealth of Massachusetts, at the Offices of David
Zirken, 20 Main Street, Natick, Massachusetts, on
Thursday, May 25, 2006, at 10:20 a.m.

HOLLINGSWORTH & ASSOCIATES
(781) 235-1424

Page 57

1 interaction with him?
 2 A No.
 3 Q Had you ever heard of Daniel Houde from any
 4 other police officers in Worcester?
 5 A No.
 6 MS. MCGUIGGAN: Prior to
 7 May 20, 2002?
 8 Q Before May 20, 2002, had you ever heard of
 9 Daniel Houde?
 10 A Had I? No.
 11 Q Before May 20, 2002, had you seen Daniel
 12 Houde's food truck anywhere in Worcester?
 13 MS. MCGUIGGAN: I object to the
 14 form. You can answer.
 15 A No. I don't remember seeing it. I'm sure
 16 I passed it. I didn't pay special
 17 attention to it.
 18 Q So it's your testimony that before May 20,
 19 2002, you had never heard of Daniel Houde?
 20 A Right.
 21 Q And before May 20, 2002, you had never seen
 22 Daniel Houde's food trucks in Worcester?
 23 MS. MCGUIGGAN: Objection.
 24 A As I said -- I had no dealings with

Page 58

1 Mr. Houde. I'm sure I saw his truck
 2 somewhere once or twice. But I had no
 3 dealings with Mr. Houde.
 4 Q After May 20, 2002, did you ever have any
 5 interaction with Daniel Houde?
 6 A Not that I remember.
 7 Q So it's possible that you did have an
 8 interaction with Daniel Houde after May 20,
 9 2002, but you don't remember?
 10 A I don't remember dealing -- that's the only
 11 incident I remember dealing with Daniel
 12 Houde, in my career.
 13 Q So it's possible that you did have another
 14 dealing with him after May 20, 2002, that
 15 you don't remember today?
 16 A It's possible.
 17 Q Did you have any conversations with your
 18 fellow police officers about Daniel Houde
 19 after May 20, 2002?
 20 A When I got served with the papers for this
 21 lawsuit, but no sit-down conversations. I
 22 just asked them if they got -- received the
 23 same stuff I did, if they had gone to see
 24 the City lawyer.

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1 Q You never talked about what happened that
 2 evening on May 20, 2002, with your fellow
 3 officers?
 4 A Like I said, I got there after he was
 5 already in handcuffs.
 6 Q That's not what I asked.
 7 A So I had a very limited role there. So,
 8 no, I didn't discuss with them.
 9 Q I'm not asking about your role in it. I
 10 want to know whether or not you talked
 11 about what happened that night with the
 12 other Worcester Police officers.
 13 A No, I did not.
 14 Q You never spoke with them about it?
 15 A No.
 16 Q Can you tell me your role, if any, in what
 17 took place May 20, 2002?
 18 MS. MCGUIGGAN: I object to
 19 the form. You can answer.
 20 A I arrived at the scene after he was already
 21 in handcuffs. They said there was a female
 22 that left from the vehicle that Houde was
 23 in, and I went and searched the -- there
 24 are a few bars on Grafton Street where the

Page 60

1 incident -- the location was, and we went
 2 inside the bars. And I believe it was
 3 Officer Duffy and I found the female inside
 4 in Charlie's Tavern.
 5 Q First, what was the address of the
 6 incident?
 7 A I think it was Frank's Flowers. I'm not
 8 sure of the exact address. I know it was
 9 Grafton Street. It was lower Grafton
 10 Street by 290.
 11 Q Do you recall where the vehicles were
 12 parked at the scene of the incident when
 13 you arrived?
 14 A Which vehicles?
 15 Q Any police cruisers, Mr. Houde's vehicle,
 16 any other vehicles that were on the scene.
 17 A His vehicle was inside the parking lot to
 18 Frank's Flowers, and I believe most of the
 19 police cruisers were in there, but I'm sure
 20 some of them were parked on Grafton Street.
 21 Q Would you be able to draw a diagram of what
 22 you remember about the location of vehicles
 23 and Mr. Houde and any police officers at
 24 the scene when you arrived on May 20, 2002?

EXHIBIT E

VOL. I
Pp. 1 - 45
Exhibits: None

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF MASSACHUSETTS

C.A. NO. 05-40075FDS

* * * * *

DANIEL HOUDE,

Plaintiff

VS.

ROBERT TURGEON, STEPHEN
GUNNERSON, KEVIN JOHANSON,
MATTHEW D'ANDREA, BRIAN HALLORAN,
THOMAS DUFFY, SEAN McCANN, AND
CITY OF WORCESTER,

Defendants

* * * * *

Deposition of MATTHEW D'ANDREA, a witness called
by counsel for the Plaintiff, pursuant to the
applicable rules, before Lorreen Hollingsworth,
CSR/RPR, CSR NO. 114793, and Notary Public in and for
the Commonwealth of Massachusetts, at the Offices of
David Zirken, 20 Main Street, Natick, Massachusetts,
on Tuesday, May 23, 2006, at 2:55 p.m.

HOLLINGSWORTH & ASSOCIATES
(781) 235-1424

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1 that's his general recollection.
 2 What I'm asking you is: If
 3 you have a recollection of where you think
 4 you may have been parked that night.
 5 A I would say somewhere probably northbound,
 6 that same circle somewhere.
 7 Q Were there any cruisers from the Worcester
 8 Police Department on the left side of
 9 Mr. Houde's vehicle?
 10 A I don't recall. I don't know.
 11 Q And so you pulled in and parked your
 12 cruiser; is that fair to say?
 13 A Correct.
 14 Q And you and Mr. Halloran exited the
 15 cruiser?
 16 A Correct.
 17 Q And that was approximately three minutes
 18 after you first heard that Officer Turgeon
 19 had pulled over the vehicle?
 20 A That's a rough time frame. It's been a
 21 long time, but I would say, you know,
 22 approximately.
 23 Q You did you observe other officers at the
 24 scene?

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1 A Yes, I did.
 2 Q And who else was there when you arrived?
 3 A Officer Turgeon was and Officer Gunnerson
 4 was, I believe. Those were the two I saw
 5 initially.
 6 Q And was Officer Johanson there yet?
 7 A I didn't see him initially, so I'm not
 8 sure.
 9 Q And where did you observe Officer Turgeon?
 10 MS. MCGUIGGAN: When he first
 11 arrived?
 12 Q When you first arrived. What was his
 13 position in relation to the car?
 14 A Outside of the camper out here.
 15 Q So you pointed. Were you indicating that
 16 he was behind the camper?
 17 A No. If this is the direction -- if it's
 18 facing Frank's Flower Shop, he was to my
 19 left. So on the left side where the door
 20 was open, he was standing a few feet away
 21 from the door.
 22 MS. MCGUIGGAN: On the
 23 passenger's side?
 24 THE WITNESS: Correct.

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1 Q So when you arrived at the scene, Officer
 2 Turgeon was on the passenger side of the
 3 vehicle?
 4 A Correct.
 5 Q And where was Officer Gunnerson?
 6 A I believe he was on the passenger side as
 7 well.
 8 Q And what were those two officers doing when
 9 you arrived?
 10 A They were ordering Mr. Houde out of the
 11 vehicle.
 12 Q And where was Mr. Houde?
 13 A In the doorway of the camper.
 14 Q And was the door of the camper open?
 15 A Yes, it was.
 16 Q And when you say the "doorway of the
 17 camper," was that the back of the vehicle?
 18 A I don't remember if it was in the middle or
 19 the back. But there was a side door; it
 20 wasn't the actual back of the camper.
 21 Q There was a side door on the passenger side
 22 of the camper, is that right?
 23 A From what I remember, yes, yeah.
 24 Q And so when you arrived, Officer Turgeon

Page 32

1 and Officer Gunnerson were standing in
 2 front of that side door of the camper, and
 3 Mr. Houde was standing in that door with
 4 the door open?
 5 A Correct.
 6 Q And were they having a discussion?
 7 A I know they were ordering him out, and I
 8 observed Mr. Houde kick several times at
 9 the officers.
 10 Q Okay. So immediately upon your arrival,
 11 Mr. Houde was standing in that doorway, and
 12 he was ordered out of the camper. But
 13 instead of exiting the camper, he attempted
 14 to kick the officers?
 15 A Yes.
 16 Q And what did you do at that time?
 17 A I know Officer Halloran went up to the
 18 camper door.
 19 Q I'm sorry, who did you say?
 20 A Officer Halloran, who I was with. I'm not
 21 sure exactly where the cars were
 22 positioned. I think I had to go around.
 23 So I think Officer Halloran
 24 got to the camper first. And it appears

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1 that -- from what it looked like, that
 2 Officer Houde -- I mean, Daniel Houde tried
 3 to hop over Officer Halloran. Officer
 4 Halloran went up to the door to try to get
 5 him out, and it looked like he tried to
 6 actually leap over Officer Halloran.
 7 Q So did Officer Halloran go between
 8 Officer Gunnerson and Officer Turgeon, who
 9 were already at that location?
 10 A Yes, I believe he did.
 11 Q And is there a reason that he approached
 12 Mr. Houde rather than the other two
 13 officers?
 14 MS. MCGUIGGAN: Objection.
 15 Q You can answer.
 16 A I don't know.
 17 Q And I'm sorry, what did you say you did?
 18 You went to the other side of the vehicle?
 19 A Yeah. I don't know how the vehicles were
 20 positioned in here, but it took me a little
 21 more time to come around to the actual
 22 front of the camper, as opposed to Officer
 23 Halloran, who had a direct line to it.
 24 Q And what happened next?

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1 A I know -- Daniel Houde and Officer Halloran
 2 both fell back. Then I believe Officer
 3 Turgeon and Officer Gunnerson assisted
 4 Officer Halloran with Mr. Houde. And then
 5 there was a dog of some sort that Houde was
 6 yelling to try to -- I don't know if he
 7 actually came out the side door or came
 8 around from the opposite -- the driver's
 9 side of the vehicle, but the dog came
 10 around, and I was watching the dog to make
 11 sure it didn't bite anybody. Houde was
 12 yelling for the dog to sic people and stuff
 13 like that.
 14 Q So did you hold the dog?
 15 A No, I didn't touch it. I made sure that it
 16 wasn't going to take anybody. I was going
 17 to take action if it went after an officer.
 18 Q And what kind of a dog was that?
 19 A It wasn't a German shepherd, but I'd
 20 compare it to something that size.
 21 Q And did the German shepherd approach --
 22 A It wasn't a German shepherd, but it was
 23 relative to a dog that size.
 24 Q Did the dog approach the officers who were

Page 35

1 subduing Mr. Houde?
 2 A Yes, it did come over to the front of
 3 Mr. Houde. And I believe Officer Gunnerson
 4 was there and looking at the dog, and I
 5 said, Don't worry about the dog. I'll take
 6 care of it.
 7 Q And did it appear to you that the dog was
 8 putting Officer Gunnerson in some sort of
 9 fear?
 10 MS. MCGUIGGAN: Objection.
 11 A I wouldn't say -- I mean, I don't know. I
 12 can't put it in -- I can't be in his spot.
 13 Can I say that the dog was -- it was
 14 barking. It was -- it appeared to be
 15 somewhat of a vicious-type dog. But I told
 16 him, Don't worry about it, I'll take care
 17 of the dog.
 18 Q And how close did the dog come to Officer
 19 Gunnerson before you took care of the dog?
 20 A Well, I mean, I didn't see -- when I say
 21 "take care of," I was watching the dog. If
 22 the dog was going to go bite somebody or to
 23 that extent, I would have taken action.
 24 That's what I was telling him.

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1 I don't know how close, maybe
 2 5 feet.
 3 Q And were you ever in fear that the dog was
 4 about to attack Officer Gunnerson?
 5 A No, I wouldn't say I was in fear. But I
 6 was watching to make sure that it didn't.
 7 Q And when you were being mindful of the dog,
 8 what was Officer Gunnerson doing?
 9 A I believe he was trying to handcuff
 10 Mr. Houde. They were trying to take him
 11 into custody.
 12 Q And how was he doing that?
 13 A I don't know. I was watching the dog. I
 14 was worried that the dog might bite an
 15 officer. I was more concerned about that
 16 than what was going on.
 17 Q So did you have your back to Mr. Houde and
 18 Officer Gunnerson while you were watching
 19 the dog?
 20 A I believe I got in the way of the dog and
 21 Officer Gunnerson, so my back would have
 22 been to them.
 23 Q And when you got in between Officer
 24 Gunnerson and the dog, how far were you

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Page 39

1 from Officer Gunnerson?

2 A A couple feet maybe.

3 Q And how far was the dog from you?

4 A A couple feet.

5 Q And did the dog ever get around you to

6 Officer Gunnerson?

7 A No.

8 Q And, indeed, that's what you were there to

9 prevent; is that fair to say?

10 A Correct.

11 Q And so the dog was closer to Officer

12 Gunnerson than he was to you? Is that fair

13 to say as well?

14 A Could you ask that question again?

15 Q So if you were between where the dog was

16 and where Officer Gunnerson was, you

17 were -- at all times, you were closer to

18 Officer Gunnerson than the dog was?

19 MS. MCGUIGGAN: Objection.

20 Q Is that fair to say?

21 MS. MCGUIGGAN: I don't think

22 the dog was in that position the whole

23 time.

24 A Correct. I wouldn't say the whole time,

1 that Mr. Houde was placed under arrest?

2 A I'm sorry.

3 Q Were you aware that at some point that

4 morning Mr. Houde was placed under arrest?

5 A Correct.

6 Q And how long was it from the time that you

7 arrived at the scene until Mr. Houde was

8 placed under arrest?

9 A I'd say several minutes.

10 Q Was it --

11 A Approximately. I mean --

12 Q Would you say that it was more or less than

13 10 minutes?

14 A I'd say it was probably less than

15 10 minutes.

16 Q Would you say it was more or less than five

17 minutes?

18 A I'd say it was probably less than five

19 minutes.

20 Q Did you ever see Officer Gunnerson strike

21 Mr. Houde in the face?

22 A No, I didn't.

23 Q Did you ever see any officers strike

24 Mr. Houde?

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Page 40

1 no.

2 Q Was there a time when the dog was closer to

3 Officer Gunnerson than he was to you?

4 A He might have been initially, prior to me

5 getting between Officer Gunnerson and the

6 dog.

7 Q Did you ever witness the dog being closer

8 to Officer Gunnerson than he was to you?

9 A I wasn't really concerned about the

10 distance of Officer Gunnerson and the dog.

11 So I really can't answer that question.

12 Q What happened after you started looking at

13 the dog? Did you see any of the action

14 between Mr. Houde and any of the other

15 officers?

16 A I'm sure I did see some, but I don't recall

17 exactly what.

18 Q As you sit here today, you can't recall

19 anything that you saw that night between

20 Mr. Houde and any of the officers once you

21 started looking at that dog? Is that what

22 your testimony is?

23 A Correct.

24 Q Okay. And at some point were you aware

1 A No, I didn't.

2 Q Are you aware that Mr. Houde received

3 pepper spray that night?

4 A I heard it afterward. But I didn't see

5 that as well.

6 Q When did you hear that that had happened?

7 A I don't know if it was back at the station

8 or later on. I really don't remember.

9 Q But it wasn't at the scene; is that fair to

10 say?

11 A I really don't remember. It could have

12 been at the scene. I really don't recall.

13 Q Do you know who administered the pepper

14 spray?

15 A I heard Officer Duffy administered it.

16 Q But you don't know that for a fact?

17 A Correct.

18 Q And did you write a police report in this

19 matter?

20 A I did not.

21 Q Why not?

22 A Usually the arresting officer is the one

23 who submits an arrest report, and then

24 that's it, usually.

EXHIBIT F

POLICY AND PROCEDURE**NO. 400**

Use of Force			
date issued Sep 1, 1993	date effective Sep 1, 1993	revision no.	no. of pages 6

GENERAL CONSIDERATIONS AND GUIDELINES

Because of his law enforcement and peacekeeping role, a police officer will be required at times to resort to the use of physical force to enable him to fully carry out his responsibilities. Police officers are confronted continually with situations requiring or resulting in the use of various degrees of force to effect a lawful arrest, to ensure public safety, or to protect himself or others from harm. The degree of force used is dependent upon the facts surrounding the situation the officer faces. Only a reasonable and necessary amount of force may be used. The degree of force the officer is forced to use is dependent upon the amount of resistance or threat to safety the situation produces.

The objective of the use of force is to maintain and/or reestablish control over a situation. Control is reached when a person complies with the officer's directions and/or the suspect is restrained or apprehended and no longer presents a threat to the officer or another. Since an officer will encounter a wide range of behaviors, the officer must be prepared to utilize a range of force options that are reasonable and necessary to maintain and/or reestablish control by overcoming resistance to the officer's lawful authority while minimizing injuries.

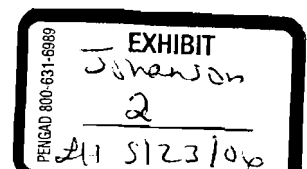
Because there are an unlimited number of possibilities, allowing for a wide variety of circumstances, no written directive can offer definitive answers to every situation in which the use of force might be appropriate. Rather, this directive will set certain specific guidelines and provide officers with a concrete basis on which to utilize sound judgment in making reasonable and prudent decisions.

DEFINITIONS

1. Use of force as outlined in this policy statement means both non-deadly force and deadly force, such as the use of hands, handcuffs or other restraining devices, chemical substances, agents or similar devices or instruments for the emission of gas, and police or riot batons and firearms.

2. Deadly Force: Deadly force as used in this policy is defined as that degree of force which a reasonable and prudent person would consider likely to cause death or serious physical injury and is further detailed in separate policy on firearms.

3. Non-deadly force: Non-deadly force shall mean that degree of force which in the circumstances is neither likely nor intended to



page 2

USE OF FORCE

SEPTEMBER 1, 1993

cause death or serious physical injury.

4. Serious Physical Injury: Serious physical injury is defined as any bodily injury which creates a substantial risk of death; causes serious, permanent disfigurement; or results in extended loss or impairment of the function of any bodily member or organ.

5. Probable Cause: Probable cause for arrest exists if, at the time of the arrest, the facts within the knowledge of the arresting officer (or within the collective knowledge of the police) are reasonably trustworthy and are sufficient to warrant a person of reasonable caution and prudence to believe that the person being arrested has committed or is committing the crime for which the arrest is being made.

6. Reasonable Belief: Reasonable belief exists when the facts or circumstances an officer knows, or should know, are such as to cause an ordinary and prudent person to act or think in a similar way under similar circumstances.

7. Defensive Force: The necessary infliction of physical battery to overcome violent resistance or to protect others from assault or injury.

POLICY

1. Members of this Department shall use only the force reasonably necessary to effect lawful objectives and effectively bring an incident under control.

2. Members of this Department may use deadly force only when the officer reasonably believes that the action is in defense of human life, including the officer's own life, or in defense of any person in immediate danger of serious physical injury, or to prevent the escape and effect the arrest of a fleeing felon whom the officer reasonably believes will pose a significant threat to human life should escape occur.

3. In each individual instance, lawful and proper force is restricted to only that force necessary to control and terminate unlawful resistance and to prevent any further physical attack against the police officers or any other person. This would include deadly and/or non-deadly force, with lethal and non-lethal weapons.

CONTINUUM OF FORCE

The amount and degree of force which may be employed will be determined by the surrounding circumstances including, but not limited to:

page 3

USE OF FORCE

SEPTEMBER 1, 1993

- a. The nature of the offense;
- b. The behavior of the subject against whom force is to be used;
- c. Actions by third parties who may be present;
- d. Physical odds against the officer: and
- e. The feasibility or availability of alternative actions.

When an officer determines that the use of force is necessary, he shall, to the extent possible, utilize the appropriate level of force as determined by the particular needs of the situation.

The preferred means of using force are set forth below in ascending order from least severe to the most drastic measures. An officer should exhaust every reasonable means of employing the minimum amount of force before escalating to a more severe application of force, except where the officer reasonably believes that lesser means would not be adequate in a particular situation and the use of force is necessary to accomplish his lawful objective or to protect himself or another from serious physical injury or death.

a. Verbalization is defined as verbal persuasion used by the officer in an attempt to defuse the situation or inform a suspect that he is under arrest.

b. Physical strength or hand control is the level of force normally required to overcome passive or defensive resistance that is not intended as an act of overt aggression toward the officer when an individual refuses to comply with verbal instructions.

c. Restraint techniques are those techniques an officer feels necessary to use to effect "Take Down and Control Holds" by using his hands or police baton.

d. Department approved non-lethal chemical substance when used to overcome resistance or an assault, or deter riotous or violent behavior.

e. The department approved police baton, when used as an impact instrument by the officer to defend himself or another from the threat of serious physical injury.

f. CNICS Gas Grenades and Projectiles when used in dispersing violent, riotous crowds or when dealing with armed or dangerous barricaded subjects.

g. The use of Deadly Force is the last option within the continuum of force and is only authorized in accordance with

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the guidelines in separate policy dealing with firearms.

PARAMETERS FOR THE USE OF NON-DEADLY FORCE

The application of non-deadly force by a police officer in the performance of his duty will generally be limited to defensive situations where it is necessary;

- a. In self-defense, or defense of another, against unlawful violence or attack to his person or property; or
- b. To overcome resistance to arrests, to conduct searches and seizures, and to prevent escapes from custody; or
- c. To preserve the peace, prevent the commission of offenses, or prevent suicide or self-inflicted injury.

PROCEDURES

1. Only issued or approved equipment will be carried on duty and used when applying any level of non-deadly force.
2. Use of restraining devices is mandatory on all prisoners, unless in the officer's judgment unusual circumstances exists which make the use of restraining devices impossible or unnecessary (e.g., prisoner is handicapped, etc.). The mere placing of handcuffs on a prisoner will not be construed to be a use of physical force.
3. Inasmuch as handcuffs are required as part of separate prisoner handling policy no report is required unless an injury or complaint of injury results from the use of cuffs.
4. All officers through inservice training and all sworn personnel prior to graduation from recruit training programs shall be issued copies of and be instructed in the following policies regarding the use of force:
 - "Use of Force"
 - "Use of Firearms"
 - "Service Baton"
 - "Aerosol Sprays (OC)"
5. A weapon should not be displayed or brandished as a threat unless its actual use in the situation would be proper. This does not prohibit an officer from having a weapon readied when it is anticipated that a weapon may be required.
6. Officers shall not alter or modify a weapon without the written permission of the Chief or his designee. Only weapons authorized by the Chief may be used.

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7. Officers shall be properly trained and instructed in the use of weapons such as batons and chemical substances before being authorized to carry such.

8. Chemical substances may be used when physical force is necessary and is covered under separate policy and procedure statement.

9. The baton may be used by an officer and is also covered under a separate policy and procedure statement.

10. After any level of non-deadly force is used, the officer shall immediately evaluate the need for medical attention or treatment for that person upon whom the force was used and arrange for such treatment when:

a. That person has a visible injury; or,

b. That person complains of injury or discomfort and requests medical attention.

11. Any person requesting and/or deemed in need of immediate medical attention shall be transported (in accordance with departmental transportation procedures) to the nearest available emergency treatment center or hospital. All medical treatment received shall be noted in the officer's report.

12. The officer shall promptly notify his immediate supervisor of the incident.

13. The officer shall attempt to locate and identify all witnesses, documenting their statements.

14. The officer shall prepare and submit all required reports. If more than one officer is involved in a use of force incident resulting in an injury, each officer shall complete a report outlining his actions and observations in the incident.

15. Each report shall contain the following information:

a. Time, Date and Location of incident,

b. The names and addresses of victims and witnesses,

c. A detailed description of the circumstances that led up to and required the use of force,

d. A detailed description of the actual use of force,

e. The extent and on-scene treatment of injuries, if any,

f. When applicable, the name of treatment facility, time of arrival and doctor administering treatment.

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16. If available, the Patrol Supervisor shall immediately respond to the scene of any incident where, as the result of the application of physical force, an officer is injured, or a prisoner has a visible injury, or complains of injury or discomfort and requests medical attention, and he shall:

a. Ensure that officers receive any necessary assistance, including medical treatment, and that any injuries to officers are properly documented.

b. Ensure that the need for medical treatment for the prisoner is properly evaluated and provided.

c. Determine if a detective should respond to the scene and the level of investigative services to be utilized (including photos, measurements and diagrams). If an injury or complaint of pain exists, supervisors are encouraged to obtain photographs. A photograph showing no injury may be as important as one which shows injury.

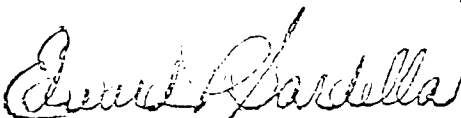
d. File a report on the incident and his observations with the officer in charge of the police station.

17. In the event that an officer uses force which results in the death or serious physical injury of a person, his Unit Commander or Designee will forthwith notify the Director of the Stress Unit.

18. Pending administrative review, the officer will be removed from line assignment and immediately be assigned to the Office of the Chief and he will be directly supervised by the Stress Unit Director or his Designee. The Stress Unit Director or Designee will initiate supportive services for said officer and/or family members.

19. For every incident where an officer applies force through the use of a weapon, his report, which is required under Section 14, shall be reviewed by his Commanding Officer who shall forward the report together with his findings as to whether the incident violated this policy and procedure.

PER:



EDWARD P. GARDELLA
CHIEF OF POLICE

EG:fl

EXHIBIT G

POLICY AND PROCEDURE NO. 500

Internal Affairs Investigations			
Date Issued 04-22-99	Date Effective 04-22-99	Revision No. 1	No. of Pages 5

INTERNAL AFFAIRS

The function of the Internal Affairs Division is to protect the integrity of the Worcester Police Department, and its personnel both sworn and non-sworn.

It is the goal of the Citizen Complaint Procedure that the rights of all citizens be protected and that police officers be free to exercise their best judgment and to initiate action in a reasonable, lawful, impartial manner without fear of reprisal. A proper relationship between the police and the citizens of Worcester, fostered by trust and confidence, is essential to law enforcement.

This system of complaint and disciplinary procedure not only subjects officers to corrective action when acting improperly, but also protects them from unwarranted criticism when discharging their duties properly.

WHO MAY COMPLAINT AND HOW:

Any citizen who feels that they have knowledge of police corruption or misconduct is encouraged to use the Worcester Police Department Citizen Complaint Procedure.

A complaint against any member of the Worcester Police Department, civilian or sworn, may be made by contacting the police department either in person or by phone. Citizen Complaint Forms are available in English, Spanish, and Vietnamese at the Service Division (lobby of the police station) the Offices of the City Manager and Mayor at City Hall, or by telephoning The Internal Affairs Division Directly, and shall be distributed to any member of the public upon request. No person, at any time, shall be refused such a complaint. The official-in-charge will be notified of the complaint, which will be forwarded to the Chief of Police or his designee who is responsible for internal investigations. Complaints received over the phone will be accepted, however, the complaint should then be reduced to written form and signed by the complaining party.

All complaints, upon receipt to the department, are to be forwarded to the Internal Affairs Division. Every complaint, regardless of its nature, is assigned for investigation. It shall be the responsibility of the Internal Affairs Division Commander to determine if the complaint

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and the subsequent investigation is to be conducted by The Internal Affairs Division or to assign the complaints investigation to the commanding officer of the complained officer(s), since discipline is recognized as a function of **command**. The respective Commander shall complete the complaint investigation and submit their findings both to the Chief of Police and to the Internal Affairs Division. These findings shall correspond to the dispositions, Sustained, Not Sustained, Exonerated or Unfounded.

In the event that a citizen appears at police headquarters to file a citizen complaint and the official-in-charge of the officer alleged is on duty, that official-in-charge shall be immediately contacted to confer with the complainant. After consultation with the official-in-charge, the complainant may or may not elect to file the complaint.

WHAT SHOULD BE REPORTED

Police behavior that should be subject to citizen complaints include, but are not limited to:

Corruption such as:

Theft
Bribery
Acceptance of gratuities, etc.

Misconduct such as:

Physical - verbal abuse
Unlawful arrest
Harassment
Possible criminal acts

INVESTIGATION AND DISPOSITION

Citizen complaints are thoroughly investigated and a report is prepared which includes statements from the complainant, the accused, and may include written statements from all witnesses.

Sworn statements are not taken, first, because Police are not authorized to administer oaths, and, secondly to avoid the possibility of intimidating the complainant and or witnesses.

Every potential witness and complainant should be made to feel comfortable and to place them in a non-threatening environment. The interview with a witness should not be

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implied to be a formal legal forum, which may discourage witnesses from speaking freely and truthfully.

The preferred form of an interview with a potential witness will be in person. The witness statement should be written on WPD IAD FORM W-1 4/99, if not taped.

The completed investigative report also includes a narrative summary of the events and a finding of facts as determined by the statements of those involved. The report is then given to the Chief of Police to review for completeness, objectivity and evaluation. If the Chief of Police has reason to believe that there was misconduct or corruption on the part of the employee, the Chief shall take whatever remedial action necessary.

The disposition of the complaints are classified as follows:

UNFOUNDED : Incident did not occur or officer not involved.

EXONERATED : Incident occurred but officer acted lawfully and proper.

NOT SUSTAINED: Insufficient evidence to prove or disprove the allegation.

SUSTAINED : Allegation is supported by sufficient evidence.

In all cases, the officer as well as the complainant is notified of the disposition.

Effective this date the following shall be this Department's Policy and Procedure concerning citizen complaints of alleged misconduct by any department member. All superior officers who receive or initiate complaints against an employee for a violation shall strictly adhere to these internal procedures.

When a citizen appears at police headquarters to complain of alleged police misbehavior they shall first be referred to the complained of officer's official-in-charge if that official is on duty. If no official of that unit is available, the complainant shall be referred to the Internal Affairs Division during periods when that office is open and an investigator is available. In the event that the Internal Affairs Division is not open or if no investigator is available, the citizen shall be referred to the Official-in-charge of the Service Division. That official will provide the complainant with a copy of the citizen complaint form and allow the citizen to read and fill out the complaint form.

Refusal to file or sign a citizen's complaint form does not eliminate the requirement of an internal investigation. The receiving official shall review the completed form and ascertain whether the complaint is of a minor nature and written statements not required. If there is clear indication that the employee did nothing improper, the official may resolve the complaint. The general nature of the complaint and the official's action shall be forwarded via an IDC report through channels to the IAD. The report shall be attached to the completed citizen's complaint form. If the matter is not resolved, the IAD Commander shall initiate procedures for an investigation of the complaint.

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Upon receipt of a citizen complaint, the Internal Affairs Division will record the receipt of the complaint, make a determination as to the identity of the complained of officer(s) and begin a case file according to procedure. If the IAD Commander determines the complaint to be minor in nature, the commander will forward the complaint to the appropriate unit commander for full investigation. The unit commander shall conduct a full and complete investigation into the allegation(s) and submit a report of his findings to the Internal Affairs Division. The unit commander shall include in the investigatory report his determination as to the allegation(s) made in the citizen complaint on the basis of one of the following four classifications:

- A. Unfounded – the investigation indicates that the act or acts complained of did not occur or failed to involve police department personnel.
- B. Exonerated – act(s) did occur but the actions of the officer were justified, lawful and proper.
- C. Not Sustained – the investigation fails to discover sufficient evidence to clearly prove or disprove the allegations made in the complaint.
- D. Sustained – the investigation disclosed sufficient evidence to clearly prove the allegations made in the complaint.

The complainant as well as the employee involved shall be notified of the disposition as soon as possible following the completion of the investigation. Information of evidentiary nature which would prove prejudicial to either party in future court proceedings may not be lawfully disseminated without court order.

The Internal Affairs Division shall retain the complaint and conduct an investigation under one of more of the following conditions:

- The Chief or his designee so orders.
- The complained of officer(s) cannot be immediately identified.
- The nature of the complaint is such that limited circulation and or a heightened level of privacy; urgency or secrecy thereof is necessary.
- The complained of officers extend beyond more than one command.
- The nature of the complaint is such that the investigation calls for the extensive investigatory resources or expertise.

In this instance, the specific unit commander shall be kept notified as to the progression of the investigation. Results of an investigation conducted by the IAD will be forwarded to the Chief of Police and the appropriate unit commander shall be made aware of the findings.

Upon the receipt of a completed commander's investigatory report, the Internal Affairs Division will forward this report along with any necessary supporting documentation to the Chief of Police. The Chief, upon reviewing the investigatory report and recommended findings, will make the final determination either to accept the recommended finding or to remand the investigation back to the investigation commander. If the investigatory report

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contains one or more sustained violations of departmental rules, regulations or procedures, the specific unit commander shall confer with the Chief of Police as to the appropriate mode of discipline. The unit commander is encouraged to review the accused officer's disciplinary record housed in the IAD when considering discipline. After obtaining authorization to implement discipline, the unit commander and his command staff shall administer the agreed upon level of sanction in accordance with this department's Rule and Regulation #130, "Discipline of Employees". The IAD shall be notified of any discipline imposed so that a record of its occurrence can be entered. Likewise, a record of any internally generated complaint and subsequent discipline shall be reported to the IAD for record keeping purposes.

Upon completion of the investigation, the Chief of Police will notify the employee(s) involved and the complainant(s) of his official determination.

EDWARD P. GARDELLA
Chief of Police

EXHIBIT H

VOL. I
Pp. 1 - 110
Exhibits: None

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF MASSACHUSETTS

C.A. NO. 05-40075FDS

* * * * *

DANIEL HOUDE,

Plaintiff

VS.

ROBERT TURGEON, STEPHEN
GUNNERSON, KEVIN JOHANSON,
MATTHEW D'ANDREA, BRIAN HALLORAN,
THOMAS DUFFY, SEAN McCANN, AND
CITY OF WORCESTER,

Defendants

* * * * *

Deposition of STEPHEN GUNNERSON, a witness
called by counsel for the Plaintiff, pursuant to the
applicable rules, before Lorreen Hollingsworth,
CSR/RPR, CSR NO. 114793, and Notary Public in and for
the Commonwealth of Massachusetts, at the Offices of
David Zirken, 20 Main Street, Natick, Massachusetts,
on Tuesday, May 23, 2006, at 11:55 a.m.

HOLLINGSWORTH & ASSOCIATES
(781) 235-1424

1 Turgeon asking Mr. Houde to unlock the door
2 and to show him his hands -- from that
3 point forward, could you tell me everything
4 that you observed in regards to Mr. Houde
5 that evening?

6 A May I take a break?

7 (A short break was taken.)

8 Q I think my question was: Tell me what
9 occurred or what you observed from the time
10 you arrived at the passenger side window of
11 Mr. Houde's vehicle until Mr. Houde was
12 taken into custody that evening or that
13 morning, I guess I should say.

14 A All right.

15 Q It's a bit of an open-ended question. I
16 think you can --

17 A It is. That's okay.

18 I'm at the passenger side and
19 Officer Johanson enters the camper from,
20 like, a back door, like a backside door.
21 When he comes into the camper, the female
22 passenger decides she's leaving. And I was
23 telling her, Keep your hands where I can
24 see them; stay in the vehicle.

1 She throws open the door, the
2 passenger door. She hit me. I get pushed
3 to the side a little bit, and she goes
4 bolting out of the camper, and I let her
5 go.

6 Officer Johanson is trying to
7 get Mr. Houde out of the driver's seat and
8 is telling him, you know, give us your --
9 show us your hands, give us your hands,
10 you're under arrest. And I believe he
11 unlocks the door for Officer Turgeon
12 because the door is open. So I come in,
13 start coming in the passenger side that the
14 female occupant has left open when she took
15 off.

16 Mr. Houde is holding onto the
17 steering wheel with, I don't know -- I
18 don't know if it was his left or his right
19 hand. I know he's holding onto the
20 steering wheel with one or both of his
21 hands at one point.

22 And Officer Johanson is
23 telling him to let go of the steering
24 wheel; let go of the steering wheel. And

1 he's not listening at all to anything
2 anyone's telling him. We're all telling
3 him, Show us your hands; you're under
4 arrest; put your hands behind your back.

5 So at some point Officer
6 Johanson is basically picking him up,
7 trying to pull him out of the front seat.
8 And I'm -- there's really no way for me to
9 get into this deal anyway. So I'm just at
10 the passenger -- I'm, kind of, in between
11 the passenger seat and the dashboard, I
12 guess, facing the driver's seat.

13 And as Officer Johanson is
14 trying to lift Mr. Houde out of the
15 driver's seat, Mr. Houde kicks me in the
16 chest, and I, kind of, got wedged in
17 between the windshield and the dashboard,
18 because it's a camper and there's quite a
19 bit of room in there.

20 And then somehow -- and I
21 don't really see how it concludes, Kevin --
22 or Officer Johanson has Mr. Houde and is
23 bringing him to that back door of the
24 camper.

1 I'm, kind of, stuffed in
2 between the windshield and the dashboard.
3 I'm taking up the whole passenger side.

4 So they go down, kind of, the
5 aisle. They're going to the back of this
6 camper, anyway, to the back door. So I
7 start following them, but everyone gets
8 choked up at that back door. And I can't
9 see around Officer Johanson.

10 (Off the record)

11 A So I can't get past or see past Officer
12 Johanson. They're at the backside door.

13 So at that time, I go back out
14 the front, the same way I came in. I go
15 all the way to the front of the camper and
16 out the passenger side.

17 When I come out of the camper,
18 Mr. Houde is on the ground outside the
19 camper. I don't know who else is with him
20 on the ground right then and there. I
21 go -- he's laying face down on the ground.

22 So I go to the right side of
23 Mr. Houde, and at that time I see that his
24 right arm is underneath his body and I

1 can't see his hand. So, you know, I'm
2 telling him, you know, as other officers
3 are, Put your hands behind your back. Put
4 your hands behind your back. Give us your
5 hands; you're under arrest, trying to
6 verbalize what we want him to do.

7 And he's not listening. So at
8 that time I'm, kind of, kneeling down.
9 I'm, kind of, up -- kind of, by his right
10 shoulder, I guess is the best way -- in
11 between his shoulder and his waist. And
12 I'm on that right side of his body and with
13 my left hand, I'm trying to get his right
14 arm out from underneath his body. And the
15 whole time I'm telling him, you know, Give
16 me your hand, put your hands behind your
17 back. And he's not listening, and he's
18 laying on his arm, so I can't get his arm
19 out from underneath him.

20 So as this is going on, I
21 don't know really what else was going on
22 around me, I'm just trying to get this
23 right hand out from underneath his body.

24 Then, at that time, I hear a

1 growl on my -- on the right side of me,
2 kind of, just right off to the side of my
3 head.

4 And Mr. Houde starts
5 screaming, Get him, sic him. And he's
6 saying the name, but I don't know -- I have
7 no recollection whatsoever of the name.

8 But I'm hearing this growling,
9 and I look to my right and there's a dog
10 right at -- right at my head because I'm
11 down on the ground with Mr. Houde. So I'm
12 pretty low to the ground. I'm not standing
13 up. Obviously I wouldn't be able to get to
14 his arm.

15 The dog is growling in my ear.
16 And the dog is, kind of, hunching down, and
17 very aggressive, his ears back, just as
18 you -- you know, if you've ever seen a dog
19 when they're mad, they have a very
20 distinctive posture. And he's screaming
21 for the dog, Get him, sic him. So I look
22 at the dog and I start yelling for someone
23 to get the dog, get the dog out of here,
24 get the dog.

1 As this is going on, my
2 attention is, kind of, now diverted away
3 from Mr. Houde onto this dog because I'm
4 afraid the dog is going to bite me.

5 Mr. Houde is grabbing onto my
6 left arm now with his right arm underneath
7 his body. I had my left arm underneath him
8 trying to pull his arm out. He's pulling
9 on my right arm. He starts growling,
10 almost exactly like the dog.

11 So I look over at Mr. Houde.
12 As I'm screaming for someone to get the
13 dog, I look over to Mr. Houde, and he's
14 trying to bite my left arm, as he's
15 growling. The dog is growling more. And
16 between the two of them, I don't know who's
17 growling louder.

18 He's trying to bite my left
19 arm. I'm afraid the dog is going to bite
20 me in the neck. And I just want to get out
21 of there.

22 At this point, I'm afraid I'm
23 either going to get bit by either
24 Mr. Houde, the dog, or both. So I'm

1 yelling to the guys, He's trying to bite
2 me.

3 I don't know if they
4 understood I meant the dog or him, but
5 that's what I yelled, He's trying to bite
6 me. And I'm trying to pull away from him,
7 Mr. Houde. But he's got my arm pinned now
8 between him and the ground, and the dog is
9 still on the ground.

10 And at that time I hit
11 Mr. Houde with a closed-fist impact, trying
12 to get him from biting my arm and getting
13 away from him and the dog because I'm still
14 trapped between him and the dog.

15 And that has no effect on him.
16 He doesn't budge. He's still growling,
17 trying to get my arm. The dog is on my
18 right side, growling. So I hit him again,
19 second time. First time didn't stop him --
20 didn't stop him from trying to bite me, and
21 I couldn't extricate myself to get my arm
22 free, and so I hit him a second time. And
23 it stunned him.

24 And I have that half a second

1 where he's not doing anything; he's just,
2 kind of, dazed for a second, and I reach my
3 left arm out of the way and I got out of
4 there and just got, like, 5 feet away from
5 this whole deal.

6 At that point, someone yells
7 Spray, which I know to be pepper spray, and
8 he gets sprayed and he gets handcuffed.
9 And that's pretty much the end of it.

10 Q Okay. Well, what kind of a dog was it?

11 A I don't know. I don't think -- I don't
12 really recall exactly what kind of dog. I
13 don't think it was a pure bred, but I don't
14 know.

15 Q Chihuahua?

16 A It was bigger than a Chihuahua, big enough.
17 It was a pretty big dog.

18 Q But you can't remember what kind of dog?

19 A No, I just saw teeth.

20 Q And as you were having this struggle with
21 Mr. Houde, was someone holding Mr. Houde
22 down?

23 A I have -- I don't believe so, but -- my
24 attention at this point is on Mr. Houde